IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 512 of 2024

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VAGHJIBHAI OTTAMCHAND MEHTA

Versus

VIDHUBHUSHAN VRAJCHAND SHARMA & ORS.

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Appearance:
MR SIDDHANT K. GUJARATHI, ADVOCATE for
NANAVATI ASSOCIATES(1375) for the Applicant(s) No. 1
JAY P PATEL(7800) for the Opponent(s) No. 1,2,3,4,5
RAVI V DESAI(8443) for the Opponent(s) No. 1,2,3,4,5
SHREY H DAVE(8444) for the Opponent(s) No. 1,2,3,4,5

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 24/03/2025

ORAL ORDER

1. The present Civil Revision Application has been filed challenging the judgment and order dated 27.09.2024 check the date passed by the learned Appellate Bench No.2, Small Cause Court, Ahmedabad in Civil Appeal No.36 of 2010 whereby the judgment and decree dated 22.02.2010 passed by the learned Small Causes Court No.4, Ahmedabad in HRP Suit No.715 of 2001 rejecting the suit filed by the plaintiff and allowing the counterclaim filed by the original defendant.

2. With the consent of learned advocates for the parties, the matter is taken up for final hearing.

3. The brief facts arising for filing the present application are as under:

3.1 Parties are referred to as per their original status before the trial Court i.e. applicant herein is original plaintiff -tenant and respondent is original defendant - landlord.

3.2 The applicant herein is original plaintiff - tenant and he is facing the decree of eviction passed by the trial Court and confirmed by the first appellate Court. The eviction was ordered on the ground of Section 13(1)(b) of the Bombay Rent Act herein after referred to as Bombay Rent Act.

3.3 Aggrieved plaintiff has filed present Civil Revision Application under Section 29(2) of the Rent Act seeking to challenge judgment and order dated 27.09.2024 passed by Appellate Bench No.2, Small Cause Court, Ahmedabad in Civil Appeal No.36 of 2010 whereby the judgment and decree dated 22.02.2010 passed by the learned Small Causes Court No.4, Ahmedabad in HRP Suit No.715 of 2001 rejecting the suit filed by the plaintiff and allowing the counterclaim filed by the original defendant.

3.4 The plaintiff-tenant had filed HRP No.715 of 2001 for

permanent injunction against the defendant landlord restraining the defendant landlord from demolishing the portion of terrace of the disputed shop and for mandatory injunction with respect to shift the electric meter. In the said suit, landlord defendant filed counterclaim stating that without the consent of defendant landlord, the plaintiff tenant has erected construction on the premises in nature of the permanent structure which cannot be removed without serious damage to the premises. The trial Court framed and answered the following issues vide Exh.44.

> "1. Whether the plaintiff proves that he has got tenancy rights as a heir of deceased Shri Ottamchand ? [In the affirmative]
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> 2. Whether the plaintiff proves that because of repairing work by the defendant he has to suffer a greater hardship ? [In the negative]
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> 3. Whether the defendant proves that the plaintiff has made a permanent change in the rented premises and breached the conditions of tenancy ? [In the affirmative]
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> 4. Whether the plaintiff is entitled to the injunction as prayed ? [In the negative]
>
> 4A. Whether the defendant is entitled for possession on the ground permanent change? [In the affirmative]
>
> 5. What order and decree ? [As per final order]"

3.5 The plaintiff examined himself vide Exh.50. The defendant

examined himself vide Exh.104 and the witness of the defendant was examined vide Exh.133 and after going through the documentary evidence, the oral evidence and after giving findings on all the issues, the trial Court dismissed the suit of the plaintiff and the counterclaim filed by defendant vide Exh.18 was allowed on the ground that the defendant landlord proved that, plaintiff tenant had erected permanent structure in the rented premises and breached the condition of the tenancy and trial court directed the plaintiff tenant to handover physical vacant peaceful possession of the suit premises to the defendant and also directed the plaintiff tenant to pay mesne profit of the suit property at the rate of Rs.100/- per month from the date of suit till the defendant gets vacant and peaceful possession of the suit property.

3.6 Aggrieved by the said order, the plaintiff landlord filed Civil Appeal No.36 of 2010 and after re-appreciating the evidence the First Appellate Court dismissed the said appeal. Hence, the present Civil Revision Application.

3.7 Learned advocate for the plaintiff tenant has mainly argued that the plaintiff is a tenant of defendant no.1 trust and that originally the suit premises was rented to the father of the plaintiff,

Mr.Ottamchand Kalidas Mehta, on monthly rent of Rs.100/- per month. By Resolution / agreement dated 01.07.1998 the defendant landlord permitted the original tenant Mr.Ottamchand Mehta to make certain alternation in the suit shop at the cost of tenant and further for increasing 1 ft height of ceiling of the suit shop by putting heavy Gaddar of 8 inch in the walls of the suit shop. The said Resolution dated 01.07.1998 is produced vide Exh.112 and as per the said Resolution the defendant no.3 permitted the deceased tenant Shri Ottambhai Mehta to increase height of ceiling of the suit shop by 1 ft and that the walls of the premises should be made in such a way that it may take burden and Gaddar should be at least of 8 inch. Therefore, it is the case of the plaintiff that the plaintiffs were entitled to make alteration in the suit shop by way of extending ceiling by 1 ft and, therefore, the plaintiff has argued that defendant landlord themselves had allowed the plaintiff to increase the height of loft from 3 ft to 4 ft.

3.8 Learned advocate for the plaintiff tenant had also argued that the plaintiff tenant had increased the said height and the said height as per Court's Commissioner report is 5.5 ft. It is the case of the plaintiff that as the plaintiff apprehended that because of notice issued by Ahmedabad Municipal Corporation with respect to first

floor, which was in occupation of defendant landlord, the HRP No.715 of 2001 was filed. It is the case of the plaintiff that said construction of increasing 1 ft was completed in the year 1999 and the suit is filed in the year 2001 and till the filing of the said suit, the defendant landlord has not filed any suit and it is only after filing of the HRP suit No.715 of 2001 that the defendant has filed counter-claim.

3.9 Learned advocate for the plaintiff tenant has also argued that plaintiff is in possession of the suit shop since 40 years and the entire family of the plaintiff is earning livelihood from the said shop and, the only issue in the present proceedings is that the height of loft, which was supposed to be increased by way of Resolution / Agreement dated 01.07.1998 at Exh.112 to one more feet i.e. four feet and even as per the Court Commissioner's report it is 5.5 ft and, therefore, as the permission was already given to increase the height of ceiling, the same cannot be considered as permanent alteration which if removed will seriously damage the suit shop and in view of the said fact it has been argued that the both the Courts below have not rightly appreciated the facts of the case more particularly when the plaintiff tenant was permitted to increase the height of ceiling of the property and the fact that the plaintiff having increased the

height, the same cannot be said to be construction of the permanent structure and also on the fact that no expert has been examined by the defendant to prove nature of structure and there is no evidence coming forward that the structure cannot be removed without serious damage to the premises. Learned advocate for the plaintiff tenant has relied upon the judgment reported in **1993 (2) GLR 1703** in the case of *Deviprasad Vrajlal Kachhiya vs. Chhotalal Narottamdas Panchal.*

4.1 *Per contra,* learned advocate for the defendant landlord has argued that in the guise of increasing height of ceiling of the suit, one extra floor has been constructed by the plaintiff tenant. It has also been argued that in the cross examination by the defendant, the plaintiff tenant has vide Exh.50 admitted that the said floor is having height of more than six feet. The plaintiff has also admitted in his deposition that he can easily stay there on that floor in standing mode while he is having 5.5 height and can work there easily.

4.2 Moreover, during the cross-examination of plaintiff tenant vide Exh.50, the plaintiff has admitted that said construction was carried out on first floor of the suit premises without any written permission of defendant landlord and it is not one feet of height that the plaintiff has increased but the plaintiff has constructed entire floor. Moreover,

it has also been argued that property is around 100 years old and it is also not the case of the plaintiff that it is new property and if entire floor is constructed without permission of the Ahmedabad Municipal Corporation, there is going to be serious damage to the suit property. Moreover, defendant landlord has also examined expert vide Exh.133 and the said expert has opined nature of construction.

4.3 Learned advocate for the defendant landlord has also stated that no questions were asked to the expert by the plaintiff on the question of serious damage to the property because of the new construction and burden was on the plaintiff to show that the said construction is not of permanent nature and that removal of the said construction would not damage the suit property and the plaintiff tenant has miserably failed to prove the said fact and, that the fact that the property is around 100 years old and as defendant landlord has clearly established that entire new floor has been constructed by the plaintiff and, therefore, defendant is entitled for eviction under the provisions of Section 13(1)(b) of the Bombay Rent Act. Learned advocate for the defendant has relied upon judgment reported in **1987 (3) SCC 558** in the case of *Venkatlal G. Pittie vs. Bright Brother (Private) Limited.*

5.1 Having heard learned advocates for the respective parties and having gone through the papers on record, the fact remains that the eviction of the plaintiff from the suit property is granted by Rent Court under Section 13(1)(b) of the Rent Act and as per Resolution / Agreement between the parties at Exh.112, the plaintiff was allowed to increase height of suit property by 1 ft but the plaintiff has raised the height of loft by 6 ft and has converted it into one extra floor. The fact that the plaintiff himself has produced an agreement at Exh.112 and the fact of the agreement of increasing the height of loft by one feet cannot be denied by the plaintiff.

5.2 There is no dispute that the suit property which was rented was only ground floor and the only agreement that was there between the parties was to convert the loft by one feet. There was no agreement between the parties to convert or raise height of the loft which converts it into an extra floor. Learned trial Court and the appellate Court have also relied on the photographs produced vide Exh.88 and in the cross examination of the plaintiff, the plaintiff has stated that the said photographs have been taken inside from the property. The plaintiff has also admitted that there is rack of 6 ft height. The plaintiff has also stated that his height is 5.5 ft and if he had to go in the newly constructed floor, he would not need to bend. The racks

that are kept are of 6 ft and, therefore, trial Court and the appellate Court have rightly come to the conclusion that the height of floor can easily be 6 ft. Moreover, the trial Court and the appellate Court have also considered the photographs of first as well as upper floor taken from inside and outside of the suit property which are produced vide Exh.86 and 87. In the photographs produced vide Exh.89 by the defendant, the previous and present situation of the suit property can be seen. The trial Court and the appellate Court have also taken into consideration the examination of the expert Civil Engineer who has been examined vide Exh.133 wherein also the said expert has stated that the height of the extra floor can be stated as extra floor and cannot be said to be a loft.

5.3 The fact also remains that before making any such construction of the first floor the tenant has not taken any written permission from the defendant landlord and in his evidence the plaintiff has also stated that he was approached by defendants for stopping the construction. Therefore also it is clear that the plaintiff was not permitted to construct one extra floor in the suit property. Moreover the trial Court has also dealt with findings that in view of the fact that extra floor has been constructed by the plaintiff without any permission from the defendant landlord, the same amounts to breach of tenancy

which would cause serious damage to the suit property. In the judgment relied upon by plaintiff in the case of *Deviprasad Vrajlal Kachhiya vs. Chhotalal Narottamdas Panchal* **(supra)**, construction that was made, was made of *kachha* construction and Court held that the said construction could not be considered as permanent structure and in the said case, no evidence of expert was taken and in the said case the Court had to adjudicate nature and character of the structure. The manner and mode in which structure is erected and the fact that trial Court and the appellate Court had not discussed about the permanent injury that would be caused to the premises if the said permanent alternation is to be removed and, therefore, the said judgment would be of no assistance to the facts of the present case.

5.4 Learned advocate for the defendant has relied on *Venkatlal G. Pittie vs. Bright Brother (Private) Limited* **(supra),** wherein it has been held in paras: 9, 23, 26 as under:-

> *"9. It is, first necessary therefore to consider the nature of the structures made and whether these were permanent or not. As stated hereinbefore that permanent structures were constructed was held by the two courts concurrently, namely the Judge of the Court of Small Causes as well as the Appel- late Bench of the Small Causes Court; whether by such con- struction there has been change of user is another question. On the nature of the construction, it is necessary to refer to the decision of the trial court.*

23. All the relevant factors had been borne in mind by the learned trial judge as well as appellate bench of the Court of Small Causes. Therefore, simply because another view is possible and on that view a different view is taken, will be interfering under jurisdiction under Article 227 of the Constitution which is unwarranted. The High Court was impressed by the fact that having regard to the facts and circumstances of the case and further more for efficient and complete enjoyment of the demised premises and for carrying out the business of manufacturing plastic goods, these structures had been constructed by the tenant temporarily. According to the High Court, the nature of the materials used and the intention of the tenant were relevant and according to the High Court, these structures could be removed without doing appreciable damage to the demised premises and these indicated that these were intended to be part and parcel of the normal part of the building. The High Court proceeded on the basis that the trial court as well as the appellate bench of the Small Causes Court had relied wholly on the basis of evidence of the admission of one Mr. Pittie who had admitted that the landlord had knowledge of these factors. The other evidence, according to the High Court,. of the Divecha, D'Silva, Kirtikar and Bhansali were not at all given proper and due weight. According to the High Court, the High Court had in such circumstances juris- diction to deal with this matter and in exercise of the jurisdiction, as the High Court felt that relevant and material facts had been ignored, the High Court set aside the order of the court of Small Causes, and set aside the landlord's decree and restored the tenant in possession.

26. Therefore, in view of the fact that large sum had been spent and considering the standard and the nature of the construction and lack of easy removability and the degree of an annexation to the

> *enjoyment for the original purpose, we are of the opinion that the learned judge as well as appel- late bench of the court of Small Causes had applied the correct principles and came to a plausible conclusion. About the removability of the structure, the High Court was bound by the finding of the appellate authority which appears at page 341 to 344 of the Paper Book. In a case of this nature, the High Court found that they had to enter into this ques- tion to find the real position whether the proper principles had been correctly borne in mind. It is indisputable that the finding that has to be arrived at by the court in this case is a mixed question of law and fact. Therefore, if the basic factors, for example, there was not proper appreciation of the evidence, if the assumption that lofts per se were not permanent structures then the courts below might be said to have committed error apparent on record and no court instructed in law could take such a view. But if all the relevant factors have been borne in mind and correct legal principles applied then, right or wrong, if a view has been taken by the appellate court, in our opinion, interference under Article 227 of the Constitution was unwarranted."*

5.5 Learned advocate for the defendant has also relied on the decision rendered in the case of *Swarupram Bhikhaji Raval vs. Anjanaben Maheshbhai Tailor* reported in **2014 (1) GLH 193**, more particularly para:8 which reads thus:

> *8. In the circumstances, the non-user was duly established for the relevant period inviting the ground under Section 13(1)(k) of the Act. For the discussion hereinabove, the findings concurrently arrived at by the courts below were based on cogent evidence. They are proper and plausible findings based on evidence on record. While taking the above view the court is remindful of the scope of*

> *powers of this court while exercising jurisdiction under section 29(2) of the Act, Both the courts below on appreciation of the evidence held the ground of nonuser to have been proved. By its very nature, the ground of non-user is one of facts. Therefore, a finding qua the said ground is necessarily a finding of fact. It is well settled that while exercising the revisional jurisdiction under the Rent Act, the High Court has to confine itself to examine the regularity of the proceedings before the courts below and the correctness, legality and the propriety of the decisions or orders passed. The revisional powers under the Rent Act cannot be elevated to appellate powers."*

5.6 In the circumstances, the facts of permanent alternation on the ground of Section 13(1) (b) of the Rent Act have been clearly established by defendant. For the discussion above, the concurrent findings arrived at by both the Courts below were based on cognate evidence so also the findings are based on evidence on record. Moreover, while taking the above view, the Court is mindful of the scope of powers of the Court while exercising the jurisdiction under Section 29(2) of the Act.

5.7 Both the Courts below, on appreciation of evidence, held ground of permanent alteration under Section 13(1)(b) have been proved. Therefore, the findings qua the said ground is necessarily the findings of fact. It is well settled that while exercising revisional jurisdiction under the Rent Act, the High Court has to confine itself

to regularity of the Courts below and the correctness, legality and propriety of the decisions or orders passed. Revisional powers under the Rent Act cannot be elevated to appellate powers under Section 29(2) of the Rent Act. The powers in a revision are very much limited and the question of facts cannot be re-appreciated and re-examined unless there is illegality or miscarriage of justice. Although powers in revision under Section 29(2) are limited than one under the provisions of Section 115 of CPC it is narrower than the appellate powers.

6. While exercising powers under Section 29(2) of the Bombay Rent Act, Court must ensures principles of law, information correctly bear in mind by the lower Court, the facts have been properly appreciated and decision arrived at taking all material and relevant facts in mind and in order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Such decision would not lead to miscarriage of justice and, therefore, in the guise of revision, substitution of new view, where two views are possible and the trial Court has taken particular view and, therefore, if the trial Court has taken plausible view, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of courts below because it considered it to be better view.

7. For the forgoing reasons and discussion, no interference is called for in the judgment and order dated 27.09.2024 passed by the learned Appellate Bench No.2, Small Cause Court, Ahmedabad in Civil Appeal No.36 of 2010. The present Revision Application is, therefore, required to be dismissed and it is dismissed accordingly. Rule is discharged. No order as to costs. Records and proceedings, if any, be sent back to the concerned trial Court.

(SANJEEV J.THAKER,J)

MISHRA AMIT V.