



Reserved On : 07/08/2026
Pronounced On : 21/08/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 352 of 2024

With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2024
In R/CIVIL REVISION APPLICATION NO. 352 of 2024

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/CIVIL REVISION APPLICATION NO. 352 of 2024

With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2026
In R/CIVIL REVISION APPLICATION NO. 352 of 2024

With
CIVIL APPLICATION (FOR AMENDMENT) NO. 3 of 2026
In R/CIVIL REVISION APPLICATION NO. 352 of 2024

With
R/SPECIAL CIVIL APPLICATION NO. 16262 of 2024

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/SPECIAL CIVIL APPLICATION NO. 16262 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
		✓
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INDIAN OIL CORPORATION LIMITED & ANR.

Versus

JOGINDARSINGH PRAHLADSINGH PATEL

Appearance in CRA NO.352/2024:

MR MR BHATT, SENIOR ADVOCATE WITH MR. MAYUR KISHANCHANDANI
 FOR M R BHATT & CO.(5953) for the Applicant(s) No. 1,2
 MUNJAAL M BHATT(8283) for the Applicant(s) No. 1,2

MR. MEHUL S. SHAH, SENIOR ADVOCATE WITH MR. VISHAL C. MEHTA & MR
 KV SHELAT(834) for the Opponent(s) No. 1

Appearance in SCA No.16262/2024:

MR. SHALIN MEHTA, SENIOR ADVOCATE WITH MR TARAK DAMANI for the
 Petitioner No.1



MR MR BHATT, SENIOR ADVOCATE WITH MR. MAYUR KISHANCHANDANI for
M R BHATT & CO.(5953) for Respondent(s)
MUNJAAL M BHATT(8283) for :Respondent(s) 1-2

MR. MEHUL S. SHAH, SENIOR ADVOCATE WITH MR. VISHAL C. MEHTA &
MR KV SHELAT (834) for Respondent(s) 3
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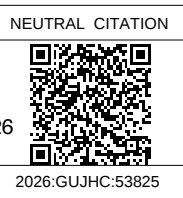
CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

CAV JUDGMENT

1. Heard Mr. M.R.Bhatt, learned Senior Counsel assisted by Mr. Mayur Kishanchandani, learned advocate for the petitioners in the revision application, Mr. Shalin Mehta, learned Senior Counsel assisted by Mr. Tarak Damani, learned advocate for the petitioner in Special Civil Application, Mr. Mehul S. Shah, learned Senior Counsel assisted by Mr. Vishal C. Mehta, learned advocate and Mr. K.V.Shelat, learned advocate for the respective respondents.

2. The revision application is filed under section 29 (2) of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as '***the Rent Act***') by the original tenant against the judgment and decree dated 23.02.2022 passed by the Appellate Bench of the Small Cause Court, Ahmedabad City in Regular Civil Appeal No. 46 of 2010, whereby it has dismissed the appeal filed by the tenant and confirmed the judgment and eviction decree dated 31.03.2010 passed by the Small Causes Court, Court No.7, Ahmedabad in HRP Suit No. 1225 of 2006 filed by the respondent – landlord.

3. Whereas the writ petition is filed by the dealer of Indian Oil Corporation Limited (IOCL) -tenant under Article 227 of the Constitution of India seeking the following reliefs:-



“A. YOUR LORDSHIPS be pleased to admit and allow the present Application;

B. YOUR LORDSHIPS be pleased to quash and set-aside the Order dated 25.11.2024 (Annexure C) passed by Ld. Judge, Small Cause Court, Ahmedabad below Execution Petition No. 68 of 2022, the Order dated 23.02.2022 (Annexure B) passed by the Ld. Appellate Bench of Small Causes Court, Ahmedabad below Civil Appeal No. 46 of 2010 and the Order dated 31.03.2010 (Annexure A) passed by the Ld. Small Causes Court below HRP Suit No. 1225/2006;

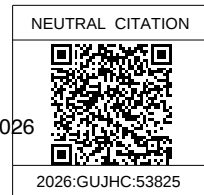
OR IN THE ALTERNATE

YOUR LORDSHIPS be pleased to direct Respondent Nos. 1 & 2 to provide a dealership on a different property as per the Dealership Agreement between the Petitioner and Respondent Nos. 1 & 2 before handing over the possession of the said property to Respondent No. 3;

C. Pending the hearing and disposal of the present application, YOUR LORDSHIPS be pleased to stay the implementation and execution of the order dated 25.11.2024 passed by Ld. Judge, Small Cause Court, Ahmedabad below Execution Petition No. 68 of 2022;

D. Pending the hearing and disposal of the present application, YOUR LORDSHIPS be pleased to direct the Respondents not to disturb the possession of the Petitioner and its business continuing on the said property being N. A. Land bearing sub-plot no. 31/1/B in Final Plot No. 21 of Town Planning Scheme No.11 (Rakhial) admeasuring 936.19 sq. Mtrs. i.e. 1120 sq. yards, situated at Mouje- Rakhial, Taluka City, District- Ahmedabad

E. Pass any such and further order as your Lordships may deem, fit, just and proper in the interest of justice.”



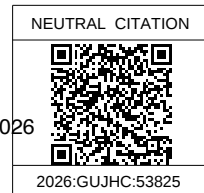
4. Since the outcome of the revision application has a direct bearing on the issue involved in the aforesaid writ petition, with the request of the learned advocates appearing for the respective parties, both these matters, i.e., the revision application and the writ petition, are heard and decided together by way of this common judgment.

5. For the sake of convenience, hereinafter the parties will be referred to as per their original position / status in the eviction suit and execution application, as the case may be. The revisionist is the original defendant – tenant, whereas the respondent is the original plaintiff – landlord and the petitioner of the writ petition is the dealer of the tenant appeared in the execution.

SHORT FACTS:-

6. The tenant entered into a registered lease deed with one M/s C. C. Dalal & Company, the original owner of the suit land (rented premises) situated at Final Plot no. 21, Sub-plot no. 31/1/B, T.P. Scheme no. 11, admeasuring 1120 square yards (936.19 square meters) out of the total area of 2090 square meters at Rakhiyal, Ahmedabad City (hereinafter referred to as “***the suit property***”).

6.1 The period of lease was initially for 20 years starting from 19.07.1973 ending on 19.07.1993. There was an automatic renewal clause of 10 years unless the lessee gave a prior notice of concluding the same. The monthly rent of Rs.1120/- was fixed for the first 20 years and upon renewal of the lease for 10 years, the rent would be Rs.1232/- per month. The tenant entered into a



dealership agreement with the dealer (M/s Vijay Petroleum – petitioner) on 21.04.1975, whereby the dealer was allowed to operate the retail outlet - petrol-pump at the suit property. The aforesaid dealership agreement came to be renewed from time to time in favour of the petitioner - dealer by the tenant.

6.2 The suit property was sold by the said M/s C. C. Dalal and Company to one Mr. M. B. Rajput and Mr. D. R. Aanchal, who were holding 75% and 25% shares respectively. The attornment notice dated 30.06.1997 was issued by them to the tenant. The said notice appears to have been acknowledged by the tenant on 23.09.1997.

6.3 Mr. M. B. Rajput appears to have sold his 75% share of the suit property in favour of the landlord (plaintiff) on 30.05.2003 by way of a registered sale deed. Mr. Rajput, vide his communication dated 30.05.2003, had informed the tenant about the aforesaid sale. Likewise, the landlord had also sent a letter of attornment to the tenant on 30.05.2003. The tenant appears to have received the aforesaid attornment letter on 09.07.2003. The tenant appears to have responded to the landlord (plaintiff) vide its letter dated 10.07.2003 that upon approval of the higher-ups of IOCL, the rent shall be paid to the landlord, i.e., the plaintiff. It is not in dispute that despite aforesaid letter of landlord, the tenant was not paying rent to landlord-plaintiff.

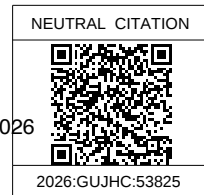
6.4 Mr. D. R. Aanchal had also sold his 25% share of the suit property in favour of the landlord, (plaintiff), on 11.04.2005. Thus, the landlord became the absolute owner of the suit property. The



landlord once again sent a letter of attornment to the tenant on 21.06.2005, informing him of the execution of the sale deed by Mr. D. R. Anchal in his favour.

6.5 Since the landlord was not getting any rent from the tenant and the lease period was over long back, a statutory notice dated 21.02.2006 was issued by the landlord, which was duly received by the tenant. In the notice, the landlord called upon the tenant to clear the arrears of rent from 30.05.2003 to 31.01.2006. According to the landlord, the tenant was in arrears of Rs.19,040/- till 29.10.2004 and thereafter, the arrears amount to Rs.22,400 up to 31.01.2006. Thus, in all, the tenant was in arrears of rent of Rs.41,440/-, that too, for past more than six months to the issuance of the notice. Undisputedly, the aforesaid statutory notice was neither replied to by the tenant, nor within one month from the date of receipt of the notice it had cleared the arrears of rent either by depositing it in the court or paying it to the landlord.

6.6 Since the tenant had failed to respond to the statutory notice, the landlord appears to have instituted HRP Suit no. 1225 of 2006 against the tenant before the Small Causes Court, Ahmedabad. The tenant appeared and filed his written statement wherein for the first time it had raised the issue of standard rent. According to the tenant - defendant, it was paying rent to the erstwhile owners of the suit property, i.e., Mr. M. B. Rajput and Mr. D. R. Anchal until 2006 and as such, has not neglected to make payment of rent to the landlord. The plaintiff was examined and submitted oral and documentary evidence which were referred by the Trial Court in



paragraph-6 of its judgment. Whereas, the defendant did not examine its officer; rather examined the official of the Bank at Exhibit-64 and submitted a bank statement at Exhibit-65, which were referred by the Trial Court in paragraph-7 of its judgment.

6.7 After the completion of the trial and upon hearing the parties as well as after going through the evidence forthcoming on the record of the suit, the Trial Court found that the tenant was in arrears of rent and the standard rent of the suit premises is Rs.1232/-. Since the lease period expired long back and despite receipt of statutory notice, tenant had not cleared the arrears of rent, the Trial Court decreed the suit in favour of the landlord. Thus, the tenant is required to hand over the vacant and peaceful possession of the suit property to the landlord.

6.8 Feeling aggrieved and dissatisfied with the judgment and eviction decree passed by the Trial Court, the tenant preferred Civil Appeal No. 46 of 2010 before the Appellate Bench of the Small Causes Court, Ahmedabad City. After hearing the parties and upon re-appreciation of the evidence on record, the Appellate Court has also reached to the same conclusion as reached by the Trial Court.

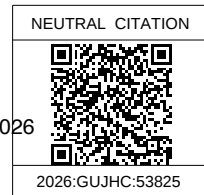
6.9 The Appellate Court has also found the tenant in arrears of rent and since the case is governed by Section 12(3)(a) of the Rent Act, confirmed the judgment and eviction decree vide its judgment dated 23.02.2022. Therefore, the tenant has preferred the revision application under Section 29(2) of the Rent Act.



6.10 After the dismissal of the aforesaid appeal filed by the tenant, the landlord appears to have filed Execution Petition no. 68 of 2022 on 12.05.2022 before the Small Causes Court, Ahmedabad to get back peaceful and vacant possession. The Executing Court issued a possession warrant on 24.02.2023. The said warrant could not be executed by the bailiff due the reasons assigned by him vide his report dated 22.08.2023, wherein it was reported that the possession of the suit premises is with the tenant and since there are inflammable goods, i.e., Petrol and Diesel found on the suit premises, the possession warrant remained unexecuted.

6.11 At this juncture, on 04.09.2023, the petitioner – dealer, M/s Vijay Petroleum (partnership), appeared before the Executing Court and submitted its application below Exhibit-27, whereby it requested the Executing Court to stay the possession warrant for about one month, as the dealer has filed Regular Civil Suit No.1029 of 2023 against the landlord and the tenant, wherein it sought a declaration that the judgment and decree passed by the Trial Court and the Appellate Bench supra are illegal.

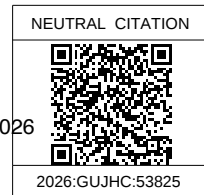
6.12 Apropos to the aforesaid application and pursuant to the aforesaid report of the bailiff, the landlord - judgment creditor appeared to have submitted an application below Exhibit-28 in the aforesaid execution petition, whereby he requested the Executing Court to pass an appropriate order for the removal of inflammable substances like Petrol, Diesel etc. and the construction on the suit land. Accordingly, the landlord – decree holder has requested the Executing Court to allow him to take the peaceful and vacant possession of the suit property from the tenant.



6.13 It appears that the impugned order dated 25.11.2024 passed by the Executing Court below Exhibit-28 in Execution Petition No.68 of 2022, is the subject matter of the Writ Petition. At the given point of time, the parties have tried to resolve the dispute amicably, but they failed. The tenant did not bother to object to the Execution Petition by filing its objections. Likewise, the dealer, being a third party in the execution proceedings, also did not file any objections except for the aforesaid request to adjourn the execution.

6.14 Since there is no stay granted by this Court against the execution, implementation, and operation of the judgment and decree passed by the Trial Court and Appellate Court, as the case may be, following the dictum of the Hon'ble Apex Court in the case of ***Rahul S. Shah v. Jinendra Kumar Gandhi & Ors***, reported in ***(2021) 6 SCC 418***, the Executing Court vide its impugned order dated 25.11.2024 allowed the application of the landlord - judgment creditor at Exhibit-28, whereby it appointed the Court Commissioner to hand over the vacant and peaceful possession of the suit property to the landlord - decree-holder after removing the erected construction and disposing of the inflammable goods lying at the suit property in accordance with law.

6.15 Feeling aggrieved and dissatisfied with the aforesaid order passed by the Executing Court, the dealer has preferred the present Writ Petition, being Special Civil Application No. 16262 of 2024.



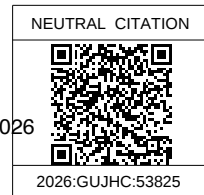
SUBMISSIONS OF THE REVISIONIST – TENANT

7. Mr. Manish R. Bhatt, learned Senior Counsel, assisted by Mr. Mayur Kishanchandani, learned advocate for the revisionist, has made the following submissions: -

7.1 The Courts below have committed a jurisdictional error by passing a decree of eviction on the ground of arrears of rent despite the fact that the Trial Court, at the time of passing the judgment, for the first time decided the issue of standard rent. It is a settled position of law that in a case of dispute of standard rent raised by the tenant, the case cannot be governed by Section 12(3)(a) of the Rent Act and is always governed by Section 12(3)(b) of the Rent Act.

7.2 The tenant has never failed to pay rent or neglected to make payment of rent to the landlord. The tenant had successfully proved on record, by leading oral and documentary evidence, that it had paid rent to the erstwhile owners and regularly deposited the rent in the Court during the course of trial of the suit, whereby the tenant is entitled to be given protection against eviction as per Section 12(3)(b) of the Rent Act.

7.3 The statutory notice issued by the landlord was also defective, inasmuch as the landlord demanded for rent at the rate of Rs.1120/- p.m. from 30.05.2003 to 29.10.2004 and from 30.10.2004 to 31.01.2006, whereas the landlord purchased a 75% share from Mr. M. B. Rajput on 30.05.2003 and the balance 25% share was purchased from Mr. D. R. Aanchal on 11.04.2005. Thus,



the landlord was not entitled to receive full rent, i.e., Rs.1120/- p.m. from 30.05.2003 until 10.04.2005. Once the statutory notice issued by the landlord was defective, considering the mandatory provisions of Section 12 of the Rent Act, no decree of eviction could have been passed against the tenant holding that the tenant was in arrears of rent for more than six months after one month from the expiry of statutory notice.

7.4 The tenant, being a statutory Corporation and in the business of public utility, in the facts of the present case, this Court should exercise its revisional jurisdiction in favour of the tenant, whereby the decree of eviction may be quashed and set aside. The tenant, having paid the rent to the erstwhile owner as aforesaid, it would not be a case where the tenant has neglected to make payment.

7.5 In support of his submissions, Mr. Manish R. Bhatt, learned Senior Counsel, would rely upon the decision of the Hon'ble Apex Court in the case of ***Mahendra Raghunathdas Gupta Vs. Vishvanath Bhikaji Mogul & Ors.*** reported in ***(1997) 5 SCC 329.***

SUBMISSIONS OF THE PETITIONER – DEALER OF THE TENANT:-

8. Mr. Shalin Mehta, learned Senior Counsel, assisted by Mr. Tarak Damani, learned advocate for the petitioner – dealer, has strenuously made the following submissions: -

8.1 The dealer was a necessary and proper party in the suit for eviction filed by the landlord against the tenant, and having not

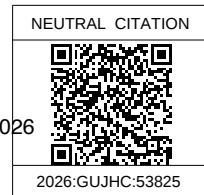


been joined, the eviction decree passed by the Courts below is required to be quashed and set aside as being passed without a necessary and proper party.

8.2 The case of the landlord cannot be governed by the provisions of Section 12(3)(a) of the Rent Act, inasmuch as there was no neglect on the part of the tenant not to make payment of rent; rather, the tenant in fact made payment to the landlord (may be to erstwhile owners), and due to such a mistake, the dealer should not be suffered.

8.3 The landlord had failed to prove on record that there was any neglect to make payment of rent by the tenant. The language of Section 12 of the Rent Act is required to be strictly interpreted by this Court, and as the Rent Act is a beneficial piece of legislation to protect the interest of the tenant against unlawful eviction at the hands of a mighty landlord, this Court should exercise its extraordinary powers under Article 227 of the Constitution of India read with Section 29(2) of the Rent Act, thereby it should quash and set aside the judgment and decree passed by the Courts below.

8.4 The discretion was available to the Courts below not to pass a decree of eviction when found that there was neither an intentional nor a deliberate neglect in making payment of rent by the tenant, the Courts below have failed to exercise such discretion vested in them, thereby committed a serious error in law as well as a jurisdictional error, which requires to be corrected by this Court. The dealer, having not been joined in the suit, has a right to object in execution, and without giving the dealer a reasonable



opportunity to make its obstruction good, the Executing Court hurriedly passed the impugned order, which is bad in law.

8.5 The dealership was offered by the tenant to the dealer in the defence quota. Thus, a special treatment should be given to the dealer, who is the only affected party if the decree will be executed in terms.

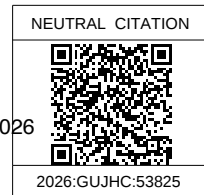
8.6 In support of his submissions, Mr. Mehta, learned Senior Counsel, would reply upon the decision of the Hon'ble Apex Court in the case of ***Ram Chandra Choudhary & Ors. Vs. Roop Nagar Dugdh Utpadak Sahakari Samiti Limited & Ors.*** reported in ***2026 SCC OnLine SC 583***.

9. By making the above submissions, the respective learned Senior Counsel appearing for the revisionist and petitioner have requested this Court to allow the Civil Revision Application and Writ Petition, respectively.

SUBMISSIONS OF THE RESPONDENT – LANDLORD:-

10. *Per Contra*, Mr. Mehul S. Shah, learned Senior Counsel, assisted by Mr. Vishal C. Mehta, learned advocate, as well as Mr. K. V. Shelat, learned advocate, who appeared for the landlord, have jointly made the following submissions:

10.1 The Courts below, as well as the Executing Court, have not committed any error, much less any gross error of law, which requires to be corrected by this Court while exercising its revisional



powers under Section 29(2) of the Rent Act and Article 227 of the Constitution of India, as the case may be.

10.2 The Courts below, after appreciating the oral and documentary evidence on record, have correctly reached to the conclusion that the tenant, having been found in arrears of rent for more than six months despite receipt of the statutory notice issued by the landlord, rightly passed the decree of eviction.

10.3 The tenant was served with two attornment notices by the landlord; despite that, the tenant did not pay rent to the landlord-plaintiff. This was nothing but a neglect to pay rent by the tenant. The first letter of attornment was issued by the landlord on 30.05.2003, when he purchased a 75% share from Mr. M. B. Rajput, and the second letter of attornment was sent to the tenant on 21.06.2005, when he purchased the balance 25% share from Mr. D. R. Aanchal on 11.04.2005. It is not in dispute that despite receiving the aforesaid letters of attornment, the tenant did not come forward for any fresh agreement with the landlord, or make payment of rent to him.

10.4 The tenant has failed to respond to the statutory notice dated 21.02.2006 issued by the landlord, and once having not cleared the arrears of rent within one month from the date of receipt of the aforesaid notice, as per Section 12(3)(a) of the Rent Act, the Court had no option but to pass a decree of eviction.

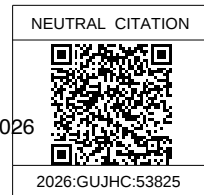
10.5 A bare reading of the written statement would show that tenant had paid Rs.1120/- only (Rs.840/- to Mr. M. B. Rajput +



Rs.280/- to Mr. D. R. Aanchal) and failed to pay/deposit Rs.1232/- as agreed by the tenant as per the lease agreement. It is an undisputed fact that as per the lease agreement, the tenant was required to pay a Rs.1120/- monthly rent for the first 20 years, which was over on 19.07.1993, and upon completion of such period, for a further period of 10 years, the rent was required to pay rent @ Rs.1232/- p.m. Having not paid the full rent even to the erstwhile owners, it shows that the tenant neglected to make payment of rent. The tenant has undisputedly not paid any rent to the plaintiff (landlord), though demanded by way of the statutory notice. By no stretch of imagination, such an act on the part of the tenant can be considered a mistake in payment, as tried to be portrayed by the learned Senior Counsel for the tenant and dealer.

10.6 The tenant is a statutory corporation and is backed by a legal team who can very well guide the officers of the tenant regarding the payment of rent to the landlord - plaintiff, rather than its erstwhile owners.

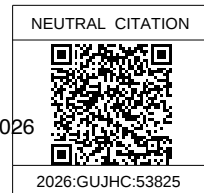
10.7 Since the tenant had not come forward by examined its officials, the mental state of mind of the tenant in regard to no neglect in making payment of rent was not brought on record, and at least the landlord had no occasion to controvert such a fact, which is now raised for the first time before this Court. In absence of any oral evidence led by the defendant, this Court should not accept the submission of the tenant that it was only a mistake and no neglect on its part to make payment of rent to the landlord.



10.8 The tenant has never disputed the issue of standard rent, and for the first time it has raised the issue of standard rent only in its written statement; then, as per the settled position of law, the tenant was not entitled to raise the plea of standard rent. Even though the Trial Court had decided the issue of standard rent at the time of final adjudication of the suit in the judgment, it would not mean that the case would be governed by Section 12(3)(b) and not by Section 12(3)(a) of the Rent Act. It is an undisputed fact that as per the lease agreement, the agreed rent was Rs.1120/- initially for 20 years starting from 19.07.1973, and upon completion of 20 years from the said date, the rent ought to have been paid @ Rs.1,232/-. Thus, the plea of standard rent at the instance of the tenant at a belated stage was nothing but a sham defense.

10.9 As per the settled position of law, once it is proved on record that the tenancy is governed by Section 12(3)(a) and there is a default on the part of the tenant, having not paid arrears of rent for more than six months within one month from the date of receipt of the statutory notice and/or raised a dispute of standard rent within one month from the date of receipt of the statutory notice, as the case may be, as a consequence, the Court has to pass the decree of eviction.

10.10 As per various decisions of the Hon'ble Apex Court, there is no discretion left with the Court in a case where a tenant is found to be in default, as not cleared the arrears of rent pursuant to the statutory notice, and if the case is governed under Section 12(3)(a) of the Rent Act. Having found such a default on the part of the



tenant, the Courts below have correctly not used their discretion in favour of the tenant. Whereas, in a case governed by Section 12(3) (b) of the Rent Act, if the tenant is found to be in arrears of rent as on the date of the first hearing, i.e., framing of issues, no statutory protection is available to the tenant which can save him from eviction. Mr. Shah, learned Senior Counsel, under instructions from his client, would inform this Court that against the arrears of rent of Rs. 17,224/-, the tenant deposited only Rs. 13,160/- and as such, as on the date of framing of issues also, i.e., on 3.10.2007, the tenant was in arrears of rent. Thus, the tenant cannot get any protection against the eviction decree.

10.11 It is also a settled position of law that a sub-tenant is neither a necessary nor a proper party in an eviction suit. The dealer does not have any privity of contract with the landlord, and as per the terms of the dealership agreement executed between the dealer and the tenant, the dealer has no independent right over the suit property except to run the retail outlet of the tenant.

10.12 This Court is having limited jurisdiction to interfere with the judgment and decree passed by the Courts below, and in the absence of any perversity or any gross error committed by the Courts below, this Court should not exercise its revisional jurisdiction. Likewise, since the dealer – third party has not submitted any objection, the Executing Court was well within its rights to remove the obstructions coming in the way of the decree holder - landlord to get back peaceful and vacant possession; this Court should not exercise its powers under Article 227 of the



Constitution of India, as the Executing Court has neither committed any illegality nor is the impugned order grossly perverse.

10.13 In support of his submissions, Mr. Shah, learned Senior Counsel would rely upon the following decisions: -

- (1) ***Jaywant S. Kulkarni & Ors. Vs. Minochar Dosabhai Shroff & Ors, (1988) 4 SCC 108;***
- (2) ***Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani & Ors, (1989) 4 SCC 612;***
- (3) ***Yusufbhai Noormohammed Jodhpurwala Vs. Mohd. Sabir Ibrahim Byavarwala, (2015) 6 SCC 526;***
- (4) ***Taraben Wd/o Bansilal Maganlal Vs. Gulamhusssain Rajabali Lokhandwala, 2000 (2) GLH 754;***
- (5) ***Manjulaben Wd/o Ramanlal Nathalal Vs. Gajiben Wd/o Ramanlal Purshottam, 2001 (1) GLR 186;***
- (6) ***Civil Revision Application Nos.311 of 2026; 312 of 2026***

10.14 By making the above submissions, Mr. Shah, learned Senior Counsel would request this Court to dismiss the Civil Revision Application as also Writ Petition.

11. No other and further submissions are being made by the learned Counsels appearing for the respective parties.

ANALYSIS AND REASONS: -

12. At the outset, I would like to refer to and rely upon the decision of the Constitution Bench of the Hon'ble Apex Court in the case of ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh - (2014) 9 SCC 78***, where it scanned different Rent Control Acts of different States of India and, after revisited the law on the scope and ambit of the revisional jurisdiction of the High Court in the rent revision, it observed and held thus:

“28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the “appellate jurisdiction” and “revisional jurisdiction” is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.

*** **

43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

(Emphasis supplied)

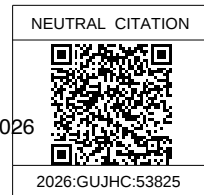
13. This revision application is filed by the tenant under Section 29(2) of the Rent Act against the concurrent findings of fact recorded by the Courts below against the tenant, whereby the tenant was found to be in arrears of rent for more than six months after one month from the date of receipt of the statutory notice.



14. It is not in dispute between the parties that prior to the filing of the eviction suit, in the past, the tenant was twice served with the letter of attornment by the landlord, i.e., dated 30.05.2003 (at Exhibit-44) and dated 21.06.2005, respectively. The landlord had purchased a 75% share from Mr. M. B. Rajput vide a registered sale deed on 30.05.2003, and the balance 25% share from Mr. D.R. Aanchal on 11.04.2005, thereby he became the absolute owner of the suit property.

14.1 It is not the case of the tenant that it was not made aware about the change of ownership. For no good reason, the tenant appears to went on making payment of rent to said Mr. M. B. Rajput and Mr. D. R. Aanchal until year 2006, in the proportion of Rs.840/- and Rs.280/-, respectively. Once the tenant was brought to notice of the change of ownership by the landlord through the aforesaid letters of attornment, the tenant could not have sent cheques towards rent in favour of the erstwhile owners. Any such payment made by the tenant cannot be considered as a valid payment of rent by the tenant to the landlord.

14.2 There is a feeble attempt by the tenant before this Court that due to administrative exigencies, it could not make payment in favour of the landlord at the relevant point of time, as the tenant could not execute a fresh agreement with the plaintiff-landlord. According to me, such a plea cannot be entertained by this Court and requires outright rejection for the simple reason that, the tenant, vide its letter dated 10.07.2003 (at Exhibit-46), informed the landlord that upon approval of the higher-ups, the rent will be

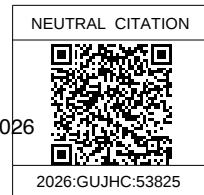


paid to the plaintiff-landlord, but after more than two and a half years from the issuance of the said letter, the higher officials of the tenant were unable to accord their approval to make payment of rent in favour of the plaintiff-landlord. This itself shows the neglect of making payment of rent by the tenant to its landlord, i.e., the plaintiff.

14.3 It may be true that the tenant might have paid the rent of Rs.1120/- p.m. in favour of the erstwhile landlords- owners, as aforesaid, but such an act on the part of the tenant cannot save him from the rigors of Section 12 of the Rent Act, inasmuch as the tenant was expected to make payment of rent to the landlord and not to the erstwhile landlord.

14.4 The tenant, being a statutory corporation, must have a legal team available to guide its officials and within a reasonable time from the date of receipt of the first attornment notice from the landlord, if the tenant was serious enough, it could have entered into a fresh agreement in favour of the plaintiff, at least for making payment of rent.

14.5 In light of the aforesaid undisputed facts and circumstances of the case, it was proved on record by the landlord that the statutory notice served upon the tenant was neither responded to nor acted upon by the tenant, as not paid any rent to the landlord within one month from the date of receipt of the statutory notice. Once the aforesaid fact was proved on record, and the case at hand governed by Section 12(3)(a) of the Rent Act, no option was left with the Courts but to pass a decree of eviction against the tenant.



15. Mr. Bhatt, learned Senior Counsel, has tried to impress me by contending that the issue of standard rent was decided by the Trial Court at the fag end of the suit, i.e., in the judgment, and in such circumstances, the case would be governed by Section 12(3) (b) and not Section 12(3)(a) of the Rent Act. This argument cannot stand in the eye of law.

15.1 The Explanation to Section 12 of the Rent Act makes the position very clear that the tenant shall have to raise the dispute of standard rent within one month from the date of receipt of the statutory notice. I would like to refer to the relevant provisions of Section 12 of the Rent Act, which read thus:

"12. Recovery of possession by landlord where tenant pays, or is ready and willing to pay, standard rent and permitted increases. —

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) (a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if the such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one

month after notice referred to in sub-section (2), the Court shall pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays cost, on the suit as directed by the Court.

Explanation I.—In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall deemed to be ready and willing to pay such amount if, within one month from the date of service on him of the notice under sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

15.2 This issue is also no longer *res integra*, as in the case of **Jaywant S. Kulkarni & Ors. (supra)**, the Full Bench of the Hon'ble Apex Court has categorically held that the dispute of standard rent must be raised by the tenant within one month from the date of receipt of the notice. The relevant observations made in the said decision are as follows:

"3. This question, as to how a payment is to be made under Section 12(3) (a) and (b), had [Corrected Vide Corrigendum No. F3/Ed BJ/26 dated 17-4-1989] been considered by this Court in Harbanslal Jagmohandas [(1977) 1 SCC 575 : (1976) 3 SCR 628] . There, both the appeals raised a common question as to whether a tenant in order to resist passing of a decree of eviction under the provisions contained in Section 12(3)(a) of the Act must dispute the standard rent within one month from the date of receipt of the notice from the landlord terminating the tenancy on the ground of arrears of rent or whether a tenant can raise such a dispute in the written

statement. There was difference of opinion between Bombay and Gujarat High Courts. **The Gujarat High Court took the view that the dispute as to standard rent had to be raised within one month from the service of the notice on the tenant.** The Bombay High Court had taken a contrary view and held that the tenant could raise a dispute as to standard rent in his written statement in answer to the suit and in such a case the provisions of Section 12(3)(a) of the Act would apply. **In the Gujarat case, the High Court found that the tenant did not raise the dispute within one month of the service of the notice terminating the tenancy, inter alia, on the ground of arrears of rent for more than 6 months.** In the Bombay appeal, the dispute was not raised within one month from the date of the receipt of the notice. It was, however, raised in the written statement. Under Section 11 of the Act, the court had power to determine standard rent when there was a dispute between the landlord and tenant regarding the amount of standard rent. It was held by this Court that under Section 12 of the Act the landlord is not entitled to recover possession of the premises so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. Section 12(2) provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent until the expiration of one month next after notice in writing of the payment of the standard rent. **This Court held that the view of the Bombay High Court was erroneous and the view of the Gujarat High Court was correct. Sub-section (3)(a) of Section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession. In the instant case, as has been found by the court, the rent is payable month by month.** There is no dispute regarding the amount of standard of rent or permitted increases. Such rent or increases are in arrears for a period of six months or more. **The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-section (2). The court was bound to pass a decree for eviction in any such**

*suit for recovery of possession. In terms of the decision of this Court in **Harbanslal Jagmohandas [(1977) 1 SCC 575 : (1976) 3 SCR 628]** , the eviction order had to follow by operation of law.”*

(Emphasis Supplied)

15.3 The aforesaid view was again reiterated by another Full Bench of the Hon'ble Apex Court in the case of **Arjun Khiamal Makhijani (supra)**, wherein taking note of the decision in the case of **Jaywant S. Kulkarni & Ors. (supra)**, it held thus:

*“6. It has been urged by the learned counsel for the tenants that 14-11-1967 was the first day of hearing of the suit and since in pursuance of an order passed by the trial court on that day, the tenants had deposited the entire arrears of rent on 9-1-1968 within the time granted by the court and continued to deposit the monthly rent, thereafter they could not be treated as defaulters in payment of rent even if the amendment made in sub-section (3) of Section 12 by the Amendment Act 18 of 1987 was ignored. We, however, find it difficult to agree with this submission. It is not denied that the arrears of rent which were for a period of more than six months and in respect of which a notice of demand had been served on the tenants under sub-section (2) of Section 12 of the Act had not been paid by the tenants to the landlord within one month of the service of the notice. It is also not denied that during the said period of one month, no dispute regarding the amount of standard rent or permitted increases was raised by the tenants. On a plain reading of clause (a) of sub-section (3) of Section 12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provided therein had to follow namely a decree for eviction against the tenants had to be passed. Clause (b) of sub-section (3) on the face of it was not attracted inasmuch as the said clause applied only to a case not covered by clause (a). This is amply borne out by the use of the opening words “In any other case” of clause (b). In **Harbanslal Jagmohandas v. Prabhudas Shivilal [(1977) 1 SCC 575]** these clauses (a) and (b) of sub-section (3) of Section 12 of*

the Act came up for consideration and it was held that the tenant can claim protection from the operation of Section 12(3)(a) of the Act only if he makes an application raising a dispute as to standard rent within one month of the service of the notice terminating the tenancy. In the instant case this had not admittedly been done by the tenants. The consequence of non-payment of arrears of rent claimed in the notice of demand was, therefore, inevitable. In Jaywant S. Kulkarni v. Minochar Dosabhai Shroff [(1988) 4 SCC 108] clauses (a) and (b) of sub-section (3) of Section 12 again came up for consideration. It was held: (SCC p. 112, para 3)

“Sub-section (3)(a) of Section 12 categorically provided that.....for recovery of possession.”

(Emphasis supplied)

15.4 At this stage, it would be apposite to refer to the decision of the Coordinate Bench in the case of **Taraben Wd/o Bansilal Maganlal (supra)**, which, having followed the decision in the case of **Arjun Makhijani (supra)**, observed thus:

*“6. It was next argued by Mr. Shelat, learned advocate appearing for the petitioners that since the dispute of standard rent was taken in the written statement by the petitioner- tenant, the case would fall under Section 12(3)(b) of the Bombay Rent Act and not under Section 12(3)(a) of the Bombay Rent Act. It is not in dispute that in response to the demand notice by the landlords, the tenant has not raised any dispute of standard rent in reply to the notice or even by substantive application of standard rent within one month from the receipt of the said notice. For the first time, the dispute of standard rent is taken in the written statement. So, it is not in dispute that the dispute of standard rent is not taken within one month of the receipt of the suit notice. Therefore, in the aforesaid circumstances, the case would fall under Section 12(3)(a) of the Bombay Rent Act and not under Section 12(3)(b) of the Bombay Rent Act. A reference is made to the decision of Supreme Court in case of **ARUN KHIAMAL MAKHIJANI VS. JAMNADAS C. TULIANI & ORS.** reported in 31(1) GLR Page-209. It has been provided in para - 6 of the said judgement as under :-*



“6. It has been urged by the learned counsel for the tenants that 14-11-1967 was the first day of hearing of the suit and since in pursuance of an order passed by the trial court.....”

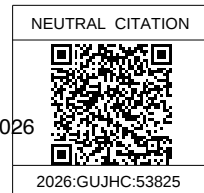
(Emphasis supplied)

16. Thus, in view of the aforesaid position of law as it stands as on date, it is evident that the tenant has to raise a dispute of standard rent within one month from the date of receipt of the statutory notice under Section 12 of the Rent Act, failing which, even if the tenant raises the dispute of standard rent in his written statement, the case would not be governed by Section 12(3)(b) if it otherwise falls under Section 12(3)(a) of the Rent Act.

17. It is evident from the facts of the case that the tenant was required to pay monthly rent, and the tenancy was governed by the payment of monthly rent. In view of the settled position of law and the said facts, according to my view, the case is governed by Clause (a) of Sub-section (3) of Section 12 of the Rent Act, and not Clause (b) of Sub-section (3) of Section 12 of the Rent Act.

18. As per the aforesaid position of law, the consequence of non-payment of arrears of rent claimed in the statutory notice of demand was, therefore, inevitable. The Court was bound to pass a decree for eviction in a suit for recovery of possession where the case was governed by Section 12(3)(a) of the Rent Act.

19. I have also gone through the statutory notice served upon the tenant. It is true that the landlord demanded Rs.1120/- as rent from 30.05.2003 till 31.05.2006, though he became the absolute



owner of the suit property on 11.04.2005, whereby he was entitled to receive Rs.840/- as monthly rent from 30.05.2003 to 10.04.2005 (when he purchased the 75% share from Mr. M. B. Rajput). But undisputedly, after 11.04.2005 until 30.06.2006, the tenant was required to pay full rent, i.e., Rs.1120/- to the landlord, as from 11.04.2005, the plaintiff-landlord became the absolute owner of the suit property. In any case, the tenant was fully made aware about the change of ownership, as observed above. Undisputably, the tenant failed to pay the arrears of rent for more than six months by making payment to the plaintiff-landlord within one month from the date of receipt of the statutory notice. According to my view, such a tenant cannot be protected by the Court by exercising its discretion, be it of revisional or constitutional. The statutory notice cannot be said to be defective, inasmuch as the tenant was well aware to whom it required to make payment of rent. There was no reply from side of the tenant against the statutory notice. Moreover, the tenant had not step into witness box to explain the reason of non-payment, which as such not material one but in such circumstances, the landlord could have cross-examined the official of the tenant and it might have come on record as to whether any bonafide mistake on the part of the tenant in not making payment to the plaintiff-landlord, as sought to be now canvassed before this Court. It is settled law that pleadings are not substitute of proof. [**See - RBI v. S. Mani, (2005) 5 SCC 100 (para-11)**].

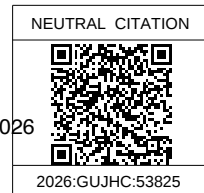
20. At this juncture, it would be apposite to again refer to the decision of the Hon'ble Apex Court in the case of **Jaywant S.**

Kulkarni & Ors. (supra), wherein the Hon'ble Apex Court has succinctly observed that where the legislature has made its intention very clear in specific terms, there is no scope for appeal to the "spirit of the law" and not to the strict letter of law. It has been held that, by way of the amendment in the year 1963 in Section 12(3)(a) of the Rent Act, the legislature has made it mandatory for the Court to pass a decree. The relevant observations made in the aforesaid decision read thus:

"5. Our attention was drawn to a decision of this Court in Mohan Laxman Hede v. Noormohamed Adam Shaikh [(1988) 2 SCC 481 : AIR 1988 SC 1111] where this Court reiterated that to take advantage of protection from eviction under Section 12(3)(b) of the Act it cannot be said that exact or mathematical punctuality was required in the deposit of rent by a tenant. The tenant had been depositing the rents in that case in court for two to three months at a time. There the court was concerned with the expression "regularly" as contemplated in clause (b) of sub-section (3) of Section 12 of the Act. It was not concerned with clause (a) of sub-section (3) of Section 12 of the Act. It was not concerned with the question of total failure or neglect on the part of the tenant to pay the rent. It may be instructive in this connection to note that in sub-section (3)(a) of Section 12 of the Act [Corrected Vide Corrigendum No. F3/Ed BJ/26 dated 17-4-1989] , expression "court shall pass a decree" was substituted for the words "court may pass a decree" by an amendment passed in 1963, making it mandatory to pass the decree. When the legislature had made its intention clear in specific terms, there was no scope for Shri Bhasme's appeal to "the spirit of the law" and not to the strict letter of the law."

(Emphasis supplied)

21. Even assuming for the time being that the case of the tenant was governed by Section 12(3)(b) and not Section 12(3)(a) of the Rent Act, but as pointed out by Mr. Shah, learned Senior Counsel



during the course of his submissions, as on the date of the first hearing (i.e., framing of the issues) as well, the tenant was in arrears of rent. In such circumstances, as per the decision of the Hon'ble Apex Court in the case of **Yusufbhai Noormohammed Jodhpurwala (supra)**, the tenant cannot avoid a decree for eviction.

22.1 Mr. Bhatt, learned Senior Counsel, is not in a position to show and satisfy the conscience of this Court that as on the date of framing of the issues, the tenant was not in arrears of rent, though along with the paper book, a statement is produced in regard to the deposit of rent. That calculation sheet also not help the case of the tenant in any respect.

22.2 It would be apt to refer to the pertinent observations made by the Hon'ble Apex Court in the case **Yusufbhai Noormohammed Jodhpurwala (supra)** which read thus:

“8. The law on Section 12(3)(b) is well settled by a series of judgments of this Court. In Ganpat Ladha v. Sashikant Vishnu Shinde [(1978) 2 SCC 573] , this Court overruled a judgment in Kalidas Bhavan v. Bhagvandas Sakalchand [Kalidas Bhavan v. Bhagvandas Sakalchand, (1958) 60 Bom LR 1359] case in which a Division Bench of the Bombay High Court thought that it was open under Section 12(3)(b) to exercise a discretion in favour of the tenant. In para 11 of the said judgment, it was stated : (Ganpat Ladha case [(1978) 2 SCC 573] , SCC pp. 579-80)

11. “It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by

extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. Thus, Section 12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in Ratilal Balabhai Nazar v. Ranchhodbhai Shankerbhai Patel [1967 SCC OnLine Guj 8 : AIR 1968 Guj 172 : (1968) 9 Guj LR 48] . If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3) (a) to get a decree for eviction. But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J., was doing nothing less than legislating in Kalidas Bhavan case [Kalidas Bhavan v. Bhagvandas Sakalchand, (1958) 60 Bom LR 1359] in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear. Section 12(3)(b) does not create any discretionary jurisdiction in the court. It

provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts.”

This statement of the law was followed in Jamnadas Dharamdas v. J. Joseph Farreira [(1980) 3 SCC 569] , at para 12 and Mranalini B. Shah v. Bapalal Mohanlal Shah [(1980) 4 SCC 251] , at para 12.

10. On facts, it is clear that the tenant was in arrears of rent prior to the filing of the suit and continued to be so. On the date of the first hearing of the suit, that is the date on which issues were struck, namely, 3-8-1994, the rent that was paid admittedly fell short by Rs 270. It is clear therefore that assuming that the respondent is a bona fide tenant the right that is conferred upon him by the legislature can be availed of only twice and on both occasions the tenant was found to be in arrears. The High Court was wrong in interpreting Section 12(3)(b) purposively holding that so long as the High Court, in its discretion, feels that there is a readiness and willingness on the part of the tenant to pay rent, the High Court can in its discretion say that substantial compliance with Section 12(3)(b) is good enough for the tenant to escape eviction on the ground of non-payment of arrears of rent. Having regard to the judgments of this Court and the fact that Section 12(3)(b) has been construed to be a mandatory provision which must be strictly complied with, the judgment [Mohd. Sabir Ibrahim Byavarwala v. Yusufbhai Noormohammed Jodhpurwala, 2013 SCC OnLine Guj 5174] under appeal has to be set aside, and the order of the Appellate Bench of Small Causes restored.”

(Emphasis supplied)

23. Thus, in view of the aforesaid position of law, the tenant cannot avoid a decree for eviction even if its case was to be governed under Section 12(3)(b) of the Rent Act.



24. So far as the dealer is concerned, Mr. Mehta, learned Senior Counsel, has tried his level best to convince this Court that the decree passed by the Courts below is defective, inasmuch as the dealer was not joined in the eviction suit filed by the landlord, and in absence of a necessary and proper party, the decree passed by the Courts below requires to be quashed and set aside.

24.1 This submission is devoid of any merit for the simple reason that the dealer did not have any privity of contract with the landlord. The dealership agreement produced on record (with the writ petition) would clearly indicate that the dealer has no direct interest in the suit property, except being authorized to run the retail outlet of the tenant. Regarding the right and interest in the suit property are concerned, only the tenant held those rights. Even otherwise, as per the settled position of law, a sub-tenant is otherwise not required to be joined in a suit filed at the instance of the landlord. Moreover, the plaintiff is the *dominus litis* and cannot be compelled to join a party who is neither a necessary nor a proper party.

24.2 Mr. Mehta, learned Senior Counsel, is unable to cite any case law which held that the sub-tenant / dealer is required to be joined in an eviction suit filed at the instance of the landlord being necessary or proper party.

24.3 *Per contra*, Mr. Shah, learned Senior Counsel, has correctly placed reliance upon the decision of the Coordinate Bench of this Court in the case of ***Manjulaben Wd/o Ramanlal Nathalal (supra)***, wherein it has been held that in view of Section 13(1)(e)



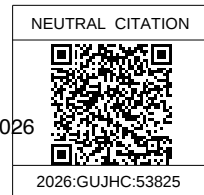
of the Rent Act, a sub-tenant is not required to be joined as a defendant in the suit.

25. At this juncture, it would be apt to refer to and rely upon the decision of the Hon'ble Apex Court in the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., & Ors., (2010) 7 SCC 417***, wherein the Hon'ble Apex Court (speaking through Hon'ble Mr. Justice R.V. Raveendran), held thus:

“15. A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

(Emphasis supplied)

26. Having regard to the facts of the present case, and after going through the relevant clauses of the dealership agreement made available with the writ petition, I am of the considered view that the dealer was neither a necessary nor was a proper party in the eviction suit, inasmuch as he had no direct interest in the suit property, and in absence of any privity of contract between the landlord and the dealer, the dealer had no right to be impleaded in



the proceedings arising out of an eviction suit and/or object to the execution of the decree.

27. Furthermore, the dealer has not even objected to the execution of the decree by filing its objections, except filing an application below Exhibit-27 in the execution proceedings, wherein it requested the executing Court to grant the dealer 30 days' time, which was already over long ago.

27.1 Any suit which might have been filed by the dealer against the landlord and tenant would not *ipso facto* entitle the dealer to be impleaded in this revision proceedings, which arising out of an eviction suit. Accordingly, I am not at all impressed by the submissions made by Mr. Mehta, learned Senior Counsel, and as such, the decision of the Hon'ble Apex Court in the case of **Ram Chandra Choudhary & Ors. (supra)** is of no help to the dealer.

CONCLUSION:

28. The upshot of the foregoing observations, discussions, and reasons leads to only one conclusion that the impugned judgments and orders passed by the Courts below, including the Executing Court, are neither perverse, nor grossly erroneous, nor passed contrary to the settled position of law; rather, the impugned judgments and orders passed by the Courts below are in consonance with the settled position of law discussed supra.

29. In view of the foregoing conclusions, I am of the considered view that neither the revision nor the writ petition has any merit,



and accordingly, both are dismissed in *limine*. No order as to costs.

30. The Executing Court shall see to it that the execution proceedings shall be concluded as early as possible. **[See: - *Periyammal (Dead) Through Lrs Vs. V Rajamani, (2025) 9 SCC 568*].**

31. As a sequel, all the connected civil applications filed in the revision application as well as the writ petition are also found devoid of merit and, accordingly, they are rejected.

(MAULIK J.SHELAT,J)

Lalji Desai

32. After the pronouncement of the judgment, Mr. M. R. Bhatt, learned Senior Counsel, would request this Court to suspend the operation of this order for some time and pointed out that during the pendency of these matters, an arrangement was made to request the executing Court to defer the execution proceeding.

33. *Per contra*, Mr. K. V. Shelat, learned advocate appearing for the respondent - landlord, has vehemently opposed to such request.

34. In view of the reasons assigned in the judgment, request of the petitioner is refused.

(MAULIK J.SHELAT,J)

Lalji Desai