



Reserved On : 21/08/2026
Pronounced On : 11/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 427 of 2026

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/SECOND APPEAL NO. 427 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No

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ARUN HARICHAND SHARMA & ANR.

Versus

THE SINDHU RESETTLEMENT CORPORATION LIMITED

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Appearance:

MS SM AHUJA(118) for the Appellant(s) No. 1,2

MS LIPEE D DAVE(12327) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

CAV JUDGMENT

1. The present Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 29.07.2024 passed by the Additional District Judge, Gandhidham, Kutch, in Regular Civil Appeal No. 16 of 2021, whereby the Appellate Court has allowed the aforesaid appeal and quashed and set aside the judgment and decree dated 01.04.2021 passed

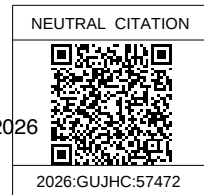


by 2nd Additional Senior Civil Judge, Gandhidham, Kutch in Regular Civil Suit No. 11 of 2015.

2. For the sake of convenience, the parties herein are referred to as per their original status in the suit. The appellants herein are original defendants, whereas the respondent herein is original plaintiff of Regular Civil Suit No. 11 of 2015.

3. The plaintiff appears to have executed Leave and License Agreement in favour of defendant No. 1 *qua* suit property on 03.07.2010 for a period of 11 months from 01.01.2010 to 30.11.2010. The plaintiff appears to have issued notice to defendant No.1, whereby it had demanded outstanding license fee and also called upon the defendant No. 1 to vacate the suit premises. As per the case of the plaintiff, the defendant No.1 sublet the suit property in favour of defendant No. 2.

4. *Per contra*, defendant No. 1 appeared and contested the suit on all possible grounds. It was denied by



defendant No. 1 that he is not occupying the suit property and sublet it in favour of defendant No.2.

5. Necessary issues have been framed by the Trial Court and after recording oral and documentary evidence, the Trial Court vide its judgment and decree dated 01.04.2021, dismissed the suit.

6. Feeling aggrieved and dissatisfied with the aforesaid judgment and decree passed by the Trial Court, the plaintiff preferred Regular Civil Appeal No. 16 of 2021, which came to be allowed vide impugned judgment and decree. Hence, the present Second Appeal.

SUBMISSIONS OF THE APPELLANTS-DEFENDANTS:

7. Ms. S. M. Ahuja, learned advocate for the appellants – defendants, would submit that since this Second Appeal is arising out of incongruous findings recorded by the Courts below, this Court should admit the appeal on substantial questions of law framed in memo of the appeal. It is submitted that the Trial Court has correctly



dismissed the suit, whereas the Appellate Court has grossly erred in reversing the judgment and decree passed by the Trial Court. It is further submitted that the plaintiff failed to prove the actual date of Leave and License Agreement and there were so many inconsistencies in the Leave and License Agreement on record which were noticed by the Trial Court and accordingly dismissed the suit.

7.1. According to Ms. Ahuja, learned advocate for the appellants, the present Second Appeal requires consideration inasmuch as the appellant No. 1 - defendant No. 1 is occupying the suit premises and ready to pay the license fee to the plaintiff.

7.2. Making the above submissions, Ms. Ahuja, learned advocate for the appellants, would request this Court to allow this appeal.

SUBMISSIONS OF THE RESPONDENT-PLAINTIFF:

8. *Per contra*, Mr. Dhaval C. Dave, learned Senior Counsel assisted by Ms. Lipee D. Dave, learned advocate



for the respondent – plaintiff, has vehemently opposed this appeal contending, *inter alia*, that there is no substantial question of law involved in this appeal inasmuch as the Appellate Court upon re-appreciation of evidence on record and having found that upon determination of the Leave and License Agreement by the plaintiff, the defendants cannot be allowed to retain the possession of suit premises, accordingly, it has correctly allowed the appeal.

8.1. It is submitted that even though defendant No. 1 might be occupying the suit premises, but he did not pay regular license fee to the plaintiff despite the undertaking given by him, which was produced at Exhibit-50. It is further submitted that none of the Courts below have created a doubt about the existence of Leave and License Agreement between the parties and as such, the relationship between the plaintiff and defendant No. 1 was of a licensor and licensee, respectively. It is further submitted that once the license has been determined by the licensor – plaintiff, the licensee – defendant No.1 has



no right to retain the suit property, especially when no counter suit/counterclaim was filed by the defendant's seeking performance of any specific terms of such Leave and License Agreement for renewal of the agreement.

8.2. Making the above submissions, Mr. Dave, learned Senior Counsel, appearing for the respondent would request this Court to dismiss the appeal.

9. No other and further submissions have been advanced by learned advocates for the respective parties.

ANALYSIS:

10. Having heard learned Counsels for the respective parties and upon perusal of the impugned judgment and decree passed by the Courts below, *prima facie*, it appears that the defendant No. 1 was licensee of the plaintiff and has occupied the suit premises in the year 2008. The formal Leave and License Agreement for a period of 11 months was executed between the parties in the year 2010 and such agreement was determined by the



plaintiff by issuing notice to the defendant No.1, thereby called upon the defendant No. 1 to handover the possession of suit premises.

11. It is not in dispute between the parties that the defendant No.1 had neither filed any counterclaim seeking performance any specific terms of Leave and License Agreement executed between the parties nor his tenancy was governed by the Bombay Rents, Hotel and Lodgings House Rates Control Act, 1947. In such factual background, once the term of license agreement got over and/or it was determined by the plaintiff being owner of the property - licensor - plaintiff, in such circumstances, in absence of any counterclaim of defendant No. 1, the Appellate Court has correctly observed that the plaintiff is entitled to receive possession of the suit property.

11.1. It would be apposite to refer to the decision of the Hon'ble Apex Court in the case of **Payal Vision Ltd. Vs. Radhika Choudhary, reported in (2012) 11 SCC 405**, wherein it is held thus:



"7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC,

(Emphasis supplied)

12. At this juncture, I would like to refer to some of the observations of the Appellate Court made in the impugned judgment, which read thus:

"18. On perusing the evidence of the plaintiff's witness No. 1, Mr. Dilip Ramchand Karna and plaintiff's witness No. 2 Mr. Manish Hiro Wadhwani, it is clear that the defendant No. 1 has not paid the license fee regularly even after giving the undertaking on 03/07/2010 vide Exh: 50 and therefore, the defendant No. 1 was issued notice by the plaintiff to pay the outstanding amount of license fee and also vacate the premises but the defendant No. 1 has not vacated the same.

20. On perusing the impugned judgment, the Ld. Trial Court has framed the various issues at Exh: 39 and amended issues at Exh: 44, in which the issue No. 1 is "Whether the plaintiff proves that he had entered into a leave and license agreement for the Office No. 107 in Sindhu-II on first floor (hereinafter called as 'suit property') for the period of 11 years at monthly license fee of Rs. 16,555/- (Rupees Sixteen Thousand Five Hundred Fifty Five Only) with the defendant No. 1 dtd. 03/07/2010 (effective from 01/01/2010 to 30/11/2010) ?" and the finding of the Ld. Trial Court for issue No. 1 is In Negative and the reasons for conclusion of the Ld. Trial Court are mentioned from page No. 11 to 36 is that there is condition in Leave and License Agreement for validity of license agreement for 10 years, however, it appears that the Ld. Trial Court has not considered the entire terms and conditions of the Leave and License Agreement and therefore, the same is required to be considered which is to be considered along with the undertaking of the defendant No.1 produced at



Exh: 50 and Leave and License Agreement at Exh: 49. On perusing Exh: 49, it appears that it is mentioned that Condition No.2:

Condition No. 2:

The Licensor do hereby allow and permit the licensee, subject to and on the terms and conditions herein contained, to enter upon and use the said premises on "Leave and License basis" effective from 01.01.2010. The Leave and License Agreement will be renewable every 11 months, for the purpose of carrying out business of Contractual Services at a monthly license fee of Rs. 16,555/- (Rupees Sixteen Thousand Five Hundred Fifty Five Only) for a period of first five years i.e. 60 months from 01.03.2008 to 28.02.2013 both days inclusive and at upward revision of License fee by 20% for next 5 years i.e. 60 months from 01.03.2013 to 28.02.2013 both days inclusive.

The Licensor also agrees to renew the License for a further two periods of 10 years each subject to terms, conditions and License fee as may be mutually agreed upon and decided on expiry of the first license period of 10 years.

21. On perusing the above condition No. 2, which is not in dispute between the parties. It is very much clear that the property was given for 10 years but it was renewable of every 11 months period and therefore, the say of the plaintiff that it was given for 11 months is not wrong but the Ld. Trial Court has not considered the same and merely there is word validity of agreement for 10 years, the Ld. Trial Court has come to the conclusion that issues are not proved by the plaintiff. Therefore, the findings of the Ld. Trial Court is wrong and issue No. 1 framed by the Ld. Trial Court vide Exh: 39 is required to be answered in affirmative. In addition to above, the issue No. 2, 3, 5, 6 & 7 are replied in Affirmative in view of facts and circumstances mentioned hereinabove and also considering the fact that the defendant No.1 has committed the breach of Leave and License Agreement and he has not paid the agreed license fees to the plaintiff even after withdrawal of previous suit on the basis of undertaking executed by the defendant No. 1 himself and therefore, the plaintiff is entitled to recover the usage charges of the suit property as the defendant No. 1 has not handed over the possession of the suit property to the plaintiff and instead of that he has handed over the possession of the suit property wrongly and illegally to the defendant No. 2 without prior permission and consent of the plaintiff. Therefore, the plaintiff is entitled for the relied as prayed for. Accordingly the rest of the issues framed at

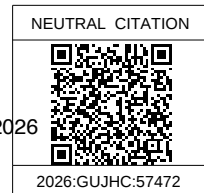


Exh: 39 and amended at Exh: 44 are required to be answered in affirmative. Therefore, the judgment and decree passed by the Ld. Trial Court is not just and proper and it is required to be interfered. Hence, the same is required to be interfered and set aside in the present appeal."

13. Ms. Ahuja, learned advocate for the appellants, though strenuously argued that this appeal should be admitted as filed against the incongruous finding of facts recorded by the Courts below, but unable to show that how finding of facts recorded by the Appellate Court is perverse or grossly erroneous. In such circumstances, this Court is unable to accept the submissions made by Ms. Ahuja, learned advocate for the appellants.

14. Having gone through the reasons assigned by the Appellate Court while decreeing the suit in favour of the plaintiff, as such, I am in complete agreement with the view taken by the Appellate Court. No gross error of law is committed by the Appellate Court while allowing the appeal filed by the plaintiff.

15. It is a settled position of law that this Court while exercising its power under Section 100 of CPC should not



interfere with the finding of fact recorded by the Courts below unless it is perverse or grossly erroneous.

15.1. It would also be apt to refer to and rely upon the recent decision of the Hon'ble Apex Court in the case of **Russi Fisheries (P) Ltd. v. Bhavna Seth**, reported in **2026 SCC OnLine SC 555**, wherein it has been categorically held that this Court should not interfere with finding of fact recorded by the Courts below unless it is so perverse or grossly erroneous, and / or contrary to a settled principles of law. The relevant observations of the said decision read thus:

"31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

*32. Long back in 1981, three judges of this Court in the case of **Bholaram vs. Ameerchand - (1981) 2 SCC 414** had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in **Madhavan Nair v. Bhaskar Pillai (Dead) by Lrs. - (2005) 10 SCC 553**, wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.*

*33. In **Kashibai w/o Lachiram v. Parwatibai w/o Lachiram - (1995) 6 SCC 213**, a similar proposition of law was laid down*



by this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

35. Again, in **Kulwant Kaur v. Gurdial Singh Mann (Dead) by Lrs - AIR 2001 SC 1273**, it was emphasized that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case."

(Emphasis supplied)

15.2. It is profitable to refer and rely upon the decision of the Hon'ble Apex Court in the case of **Jaichand (Dead) through Lrs and Others v. Sahnulal and Another** reported in **2024 SCC OnLine SC 3864**, whereby, the Hon'ble Apex Court held as under:

"25. In **Kshitish Chandra Purkait v. Santhosh Kumar Purkait** reported in **(1997) 5 S.C.C. 438**, this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.

27. This Court in **Kondira Dagadu Kadam v. Savitribai Sopan Gujar** reported in **AIR 1999 S.C. 2213** held:-

"The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."



28. It is thus clear that under Section 100, C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."

(Emphasis supplied)

CONCLUSION:

16. In light of the aforesaid peculiar facts and circumstances and having found that the defendant No. 1 being licensee cannot be allowed to retain the suit property once the license agreement was already determined and the term of license was also over long back, in both these circumstances, the Appellate Court has correctly answered the points for determination in favour of the plaintiff and accordingly allowed the appeal and decreed the suit.

17. In view of the foregoing observation and reasons, I do not find any merit in this appeal. Accordingly, it is dismissed in *limine*. The impugned judgement and decree passed by the Appellate Court is hereby confirmed. Consequently, Civil Application for stay would not survive



and hence, it is disposed of. No order as to costs. The decree shall be drawn accordingly.

SHAHANAZ

(MAULIK J.SHELAT,J)