IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 400 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

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Approved for Reporting	Yes	No
	Yes	

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IRSHADUNNISHA ALIAS IRASHADBANU D/O MOHAMMADALI MIRSAHEB KADRI & ANR.
Versus
MAKBULHUSEN ABBASALI SAIYED HEIRS OF DECEASED ABBASALI HAJI MURADALI SAIYED & ORS.

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Appearance:
FOUZAN N SONIWALA(8442) for the Applicant(s) No. 1,2
MR ARSHAD SHAIKH(11761) for the Applicant(s) No. 1,2
MR NN AJMERI(6193) for the Opponent(s) No. 1,2,3,4
S D MANSURI(7509) for the Opponent(s) No. 1,2,3,4

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**
Date : 04/03/2025
ORAL JUDGMENT

1. The present Civil Revision Application has been filed to challenge the judgment and decree passed by the Appellate Bench of Small Causes Court at Ahmedabad in Civil Appeal No.92 of 2013 dated 17.08.2023 whereby the judgment and decree dated 15.07.20213 passed by the Small Cause Court No.7 Ahmedabad in HRP Suit No.1809 of 2009 has been quashed and set aside.

2. The plaintiff had filed HRP Suit No.1808 of 2009 and 1809 of 2009 for eviction under the provision of Section 13 of the Bombay Rent Act. The trial Court granted

eviction under the provision of section 13(1)(a), 13(1)(k) of the Bombay Rent Act and the said judgment and decree were challenged by the defendants by way of Civil Appeal No.91 of 2013 and Civil Appeal No.92 of 2013 and the said appeals filed by the defendants tenant were allowed and the order passed by Appellate Bench of Small Causes Court at Ahmedabad granting eviction of the suit property was dismissed and quashed and set aside and the said order is under challenge by way of the present Civil Revision Application. The parties are referred to plaintiffs and defendants herein.

3. The brief facts arising in the present proceedings are that the plaintiffs are the owners of the suit property and the suit property was let on rent on 01.05.1963 to father of defendant No.1 i.e. Abbasali Hajimuradali at a monthly rent of Rs.53/- over and above the municipal taxes and other charges. It is specific case of the plaintiffs that the suit property was let on rent on 01.05.1963 for the purposes of business of cycle work as "Noble Cycle Works", and after the death of the original tenant, the defendant No.1 become the tenant of the suit premises. It is the case of the plaintiffs that during the life time of the

original tenant Abbasali Hajimuradali, the property at Municipal Census No.816/1 known as Baverchikhana was also let on rent to original tenant on 17.11.1970 at monthly rent of Rs.22/- and the said property was also given for business of cycle repairing work and a rent agreement was executed on 17.11.1980. It was the specific case of the plaintiffs that the suit property was let on rent for the business of cycle repairing work only and that the defendant No.1, changed the use of shop and is now doing the business of seat covers, number plate and accessories etc., and therefore, as the defendant No.1 committed breach of the terms of condition of the rent note, the plaintiffs had sought possession of the suit property.

3.1 Though in the suit, the plaintiffs have also claimed the eviction on other ground of sub letting the premises, the trial Court has not granted the decree of eviction on the ground of sub letting and the said order has not been challenged. The present Civil Revision Application only deals with the fact of change of user i.e. Section 13(l)(k) of Bombay Rent Act and Section 13(1)(a) whether the defendants have committed breach of terms of tenancy.

3.2 It is the case of the plaintiff that alongwith the ground of seeking eviction on the ground of Section 13(l)(k), the defendants have also committed breach of the terms of tenancy whereby without a permission of the plaintiffs the landlord has demolished the wall between the shop which was let in the yer 1963 and the Bavarchikhana which was let in the yer 1970 and thereby has made the entire property into one property and the present defendants were only permitted to construct the door in the wall between the property which was already used as "Noble Cycle Work" and Bavarchikhana and no consent was taken by the defendants from the plaintiffs to demolish the wall. The plaintiffs are entitled the possession of the suit in view of the section 13(1)(a) of the Bombay Rent Act.

4. Learned advocate for the plaintiffs has argued that both the properties i.e. shop and Bavarchikhana are let on rent to the deceased Abbasali Hajimuradali for the business of Cycle Repairing Work as Noble Cycle Work and the said fact is also mentioned in the rent note produced at Exhibit-32 and that the defendants were entitled to use the suit premises only for the business of cycle repairing work

and except this, defendants were not entitled to use the suit premises for any other purpose. Learned advocate for the plaintiffs has also argued that the defendants themselves have changed the use of business of the premises and started business of seat cover, number plate, automobile accessories, though the property has been given for the business of cycle repairing work, the same is not used by the defendants as cycle repairing work and no documentary evidence is produced by the defendants to show that the defendants are using the premises as cycle repairing work.

5. Learned advocate for the plaintiffs has also argued that even from the oral evidence of the defendants, the defendant could not prove the fact that the defendants are using premises for cycle repairing work, and therefore, it is the case of the plaintiffs that the defendants have committed breach of the terms of the condition of the rent note and started new business and has stopped the business of cycle repairing work, and therefore, the plaintiffs are entitled for eviction under the provision of Section 13 read with Section 108(o) of the Transfer of Property Act. It is the case of the plaintiffs that the

defendants themselves have admitted in their oral evidence that the defendants have not taken any consent of the plaintiffs for change of business. Learned advocate for the plaintiffs has relied on clause-7 of the Rent Note wherein it has been specifically mentioned that the suit shop is let for cycle repairing work except the said business, the defendants have not to use the suit premises for any other purpose. Learned advocate for the plaintiffs has stated that other than the oral evidence, there are no documentary evidence to support the case of the defendants that the defendants are doing business of cycle repairing work in the suit premises.

6. Learned advocate for the plaintiffs has stated that in the present case there is specific clause in the rent note that suit property is only to be used only for cycle repairing work and the defendants cannot change the business without the consent of the plaintiffs, and therefore, there is complete violation of terms of condition of rent note, therefore, plaintiffs are entitled for the possession of the suit property. Moreover, learned advocate for the plaintiffs has also argued that there was specific agreement with respect to the shop and Bavarchikana, the

defendant No.1 merged both the properties, and therefore, the plaintiffs are entitled the suit premises. The plaintiff's advocate has also drawn the attention of the Court to clause-4 of the Rent Note wherein it has been mentioned that the defendants can put a wall between the shop known as Bavarchikhana. The plaintiffs have removed the wall which existed between the two properties and in the oral evidence of the defendants vide Exhibit-37, the defendants have mentioned that the same was removed with oral consent was taken from the plaintiffs, and therefore, also it is the plaintiff's case that the appellate Court while re-appreciating the evidence factual aspect could not be taken into consideration the fact that the plaintiffs are not entitled for eviction of the suit property.

7. Learned advocate for the plaintiffs has also drawn attention of this Court to the findings of the appellate Court wherein the appellate Court, though the appellate Court has taken a view that after lapse of 40 years and because of development of society and economy of the country, as use of the cycle is decreasing, there were compelling circumstances upon the defendants to change his business and the appellate Court has come to a view

that because of passing of time, 52 to 62 years and change in the entire circumstances of the society and development at the city business, the cycle work business could not have been continued by the defendants, and therefore, defendants were entitled to start another business.

8. Learned advocate for the plaintiffs has relied on the judgment reported in 2001 (0) AIJEL-HC-213891 in the case of Vora Kadarbhai Majidbhai V. Mansuri Jusabhai Shakurbhai and 2019 (0) AIJEL-HC-241615 in the case of Vijay Swaroop Devatval v. Lavji Megji Mesurani and also 1998 (0) AIJEL-HC-204712 in the case of Harshadbhai Gordhanbhai Amin v. Vanmalidas Parmananddas Patel and the plaintiffs have argued that the plaintiffs are entitled for possession of the suit property as the defendants have breached the terms of the tenancy and that there is the change of user and the defendants are using the suit property for another business and when there is a specific provision and specific term that the suit premises was to be used only for cycle repairing work, the defendants could not be started any other business without permission of the plaintiffs. Hence, it has been argued that the plaintiffs were entitled to possession of the suit premises.

In support of his contention, paragraph No.15 in the case of Vora Kadarbhai Majidbhai V. Mansuri Jusabhai Shakurbhai, are reproduced as under:-

> *"15. The finding of the trial Court that the defendant raised construction of permanent nature without landlord's written consent was set aside by the lower Appellate Court. This finding is connected with finding on issue No. 8 that die tenant has committed an act contrary to the provisions of Section 108(o) of the Transfer of Property Act. The allegation is that a partition wall has been constructed by the tenant without written consent of the landlord and that a door has also been opened. Such construction cannot be said to be of permanent nature as required under Section 13(1)(b) of the Rent Act. Section 13(1)(b) provides mat the landlord shall be entitled to recover possession of any premises if the Court is satisfied mat save as otherwise provided in Section 23A, me tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure. What is permanent structure is defined in explanation to Sub-section (1) of Section 13 which provides that for the purposes of Clause (b), no permanent structure shall be deemed to be erected on any premises merely by reason of the construction of a partition wall, door or lattice work or the filling of kitchen-stand or such other alterations made in the premises as can be removed without serious damage to the premises. Thus, under this explanation construction of partition wall or opening of a door cannot be said to be permanent construction. Likewise, if any other structure has been raised which could be removed without causing serious damage to the premises it will not be construed as permanent structure. Consequently, in view of this explanation the landlord cannot get decree of eviction simply because the tenant constructed a partition wall or opened a door in the said partition wall. Moreover, it has come in evidence mat the partition wall does not reach upto the ceiling and thus such partition wall can be removed without causing any*

> *serious damage to the suit premises. Thus, on this ground, the landlord is not entitled to a decree for eviction and the view taken by the lower Appellate Court cannot be said to be illegal or erroneous. As a consequence thereof, it cannot be said that the tenant has committed any act contrary to the provisions of Section 108(o) of the Transfer of Property Act."*

9. Learned advocate for the plaintiffs has also argued that because of the demolition of the wall there is a breach of tenancy, and therefore, also plaintiffs are entitled for eviction of the suit premises under the provision of section 13(a) of the Bombay Rent Act.

10. Per contra, learned advocate for the defendants has stated that after re-appreciating the evidence, the appellate Court has rightly held that the plaintiffs are not entitled for eviction of the suit property and the learned advocate for the defendants has also argued that after considering the Rent Note produced vide Exhibit-32, the fact remains that the property more particularly, the shop was already let in the year 1963 and there are no documentary evidence to support the fact that the said shop was rented only for cycle repairing work. It is only the agreement, dated 17.11.1970 produced vide Exhibit-32, i.e. Bavarchikhana which has been given for cycle repairing

work. It has been argued by the learned advocate for the defendants that it is not true that the suit premises is not used for cycle repairing work and that the plaintiffs have not proved the fact and the plaintiffs are not using the suit property for cycle repairing work. The learned advocate for the defendants has also argued that the material thing that was seen whether the defendants are entitled to suit property for business, the change of user i.e. mentioned in Section 13(1) is with respect to change of user to business to residence and it is only if the property which was given for business, is used for a residence there will be change of user, in that view, only the plaintiffs were entitled to eviction of defendants from the suit property and in the present case as the defendants are doing business of cycle repairing work, the plaintiffs are not entitled for the possession of the suit property.

11. Having heard learned advocate for the parties and having considered the judgment and decree passed by the appellate Court, the factual aspect is that in the Rent Note, produced vide Exhibit-32 condition No.4 clearly states that the suit property has to be used only for cycle repairing business and the parties, i.e. the landlord and

tenant have specifically entered into an agreement whereby the defendants tenant have specifically agreed that, they will not use the suit premises for any other purpose than cycle repairing work. From the Court Commissioner Report, vide Exhibit-33, it can be seen that the property is used for the business of seat cover, number plate, automobile accessories and that there are seat covers of different size in the suit property. From the oral evidence of the tenant produced vide Exhibit-37 also though the defendants tenant have mentioned that they are still doing business of cycle repairing work, the defendants admit that along-with the business of cycle repairing work, they are also doing business of seat cover from the suit premises. The defendants tenant also admit that while demolishing the wall between the shop and the Bavarchikhana, they have not taken any written permission from the plaintiffs. The defendants have also admitted vide Exhibit-37 in his cross-examination that since 7 to 8 years, the defendants are doing business in the name of Noble Seat Covers and Accessories and not taken permission for change of business from plaintiffs for change of business. Though, the defendants have stated that they have not completely stopped the business of cycle repairing work, but at the

same time that they do not have any proof to show that they are doing cycle repairing work in the suit premises. The fact remains that when the property has been given exclusively for the business of cycle repairing work, just because of the change in the society can the defendants now start another business which is current in the market and city and just because now nobody is using cycle, therefore, can the defendants start new business? The observations of the appellate Court that is only because use of cycle was discontinued because of change of time and because of fact in all circumstances of society development at city business, the defendants can start another business without the permission of the plaintiffs. The said observations cannot be sustained as without the permission of the plaintiffs and without consent of the plaintiffs landlord, the defendants could not have started any other business when the suit property was given specifically for cycle repairing work and when the defendants failed to prove the fact that the defendants are using the premises for cycle repairing work and the defendants did not have any document to show that they were doing cycle repairing business in the suit property. Therefore, the trial Court after going through the

documentary evidence and the oral evidence, has rightly held that the plaintiffs have proved the fact that there was change of use by the defendants. The trial Court had rightly come to the conclusion that suit shop was specifically given for cycle repairing work whereas suit shop utilized for seat covers and automobile accessories, and therefore, the decree of eviction on the basis of proposition of law laid down of series of decision, the said conclusion of the trial Court cannot be said to be found perverse in any form. Moreover, there was clear clause in the rent note which was agreed by the defendants tenant that they will not use the suit property except cycle repairing work, admission is the best evidence. The defendants tenant have not averred any explanation to the fact that they are doing business of seat covers and accessories in the suit premises and if in the present case, there is express terms, defendants tenant were not entitled to use of shop for any other business other than cycle repairing work and as the present defendants tenant are not doing business of cycle repairing work and are doing in the name of Noble Seat Covers and Accessories. The failure of the defendants to observe and perform the terms and condition of the Rent Note entitled the plaintiffs a

decree of eviction.

12. In view of the said fact, the judgment and decree passed by the appellate Court and the factual aspect in the matter, the findings of the first appellate Court are not in consonance with the oral and documentary evidence produced before the trial Court in Civil Appeal No.92 of 2013.

13. In view of the said fact, the judgment and decree passed by the appellate Court in Civil Appeal No.92 of 2013 is quashed and set aside and the judgment an decree passed by the trial Court in in HRP Suit No.1809 of 2009 is upheld.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai