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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,  
ANAND.**

**REGULAR CIVIL APPEAL No. 58/2019**

Dharmendrabhai Chimanbhai Patel  
Age. 54, Occ. Service  
R/o Opp. Vaherai Mata Temple  
Pramukh Kutir  
Anand, Ta. Dist. Anand.  
AT Present : 2, Dunstbale Court  
Matawan, New Jersey 0774 USA  
thorough power of attorney Dr. Chetan B. Jani  
Age. 51, Occ. Service  
R/o 1, Tulsi Vila  
Karamsad Vidhyanagar Road  
Behind Gangaba Chatralaya  
At Karamsad, Dist. Anand.

**..... Appellant  
(Original plaintiff)**

***VERSUS***

Proprietor of Tusar Trading Company  
Thakkar Mukeshkumar Mohanlal  
Age. 65, Occ.  
R/o Opp. Vaherai Mata Temple  
Nr. Pond, Anand, Tal. Dist. Anand.

**..... Respondent  
(Original defendant)**

**Appeal against order dated 24/01/2019 in  
R.C.S. No. 302/2013 under section 96 of the  
Code of Civil Procedure.**

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**Appearance:**

Shri N.R.Dalwadi, Ld. Adv. for the Appellant.  
Shri Y.D. Parekh, Ld. Adv. For the Respondent.

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**::: J U D G M E N T :::**

- 1.** The appellant herein is the original plaintiffs and has preferred this appeal under provisions of Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree passed on dtd. 24/01/2019 in Regular Civil Suit No. 302/2013 by 3rd Additional Sr. Civil Judge, Anand, whereby the suit of the plaintiff came to be dismissed. For the sake of convenience, parties shall be referred as plaintiff and defendant as they were in their original position before the trial court.
- 2.** The appellant has contended in memo of appeal that;
  1. They are the absolute owners of an immovable property situated at Village Anand. The said property is ancestral property which bears City Survey No. 127/B, Tika No. 3, and Anand Municipal Property Nos. 10/3/21 to 10/3/22. The boundaries of Municipal Property No. 10/3/22 are as follows:

**East:** Municipal Property No. 10/3/21 belonging to the Plaintiffs.

**West:** Property belonging to another person.

**North:** Public Road.

**South:** Municipal Property No. 10/3/21 belonging to the Plaintiffs.

2. The property described as above is the exclusive property of the Plaintiffs/Appellants. The defendant - Respondent herein had taken the said property on lease from the Appellants' deceased father, Late Shri Chimanbhai Narayanbhai Patel, at a monthly rent of Rs. 271/- for the purpose of carrying on his personal business.
3. Thereafter, the original defendants - respondent instituted Regular Civil Suit No. 170 of 1986 before the Court at Anand against Late Shri Chimanbhai Narayanbhai Patel and Dharmendrabhai Chimanbhai Patel. During the pendency of the said suit, the parties amicably settled their dispute. Accordingly, on 20 July 2002, the suit was disposed of based on the compromise pursis filed by the parties. Under the terms of the compromise, the standard rent of the suit premises was fixed at Rs. 700/- per month.

4. The tenancy month in respect of the suit property commences on the first day of every English calendar month and ends on the last day thereof. Apart from the monthly rent, it was further agreed between the parties under the decree passed in Regular Civil Suit No. 170 of 1986 that the Original defendant would pay one-half of the municipal taxes levied in respect of the suit property to the Plaintiffs every year.
5. The Original defendant paid the monthly rent up to 30 August 2012. However, with effect from 1 September 2012, he stopped paying the rent. Consequently, the Plaintiffs served a legal notice dated 13 June 2013 upon the Original defendant, terminating his tenancy and calling upon him to hand over vacant and peaceful possession of the suit property. Despite receipt of the said notice, the Original defendant sent an evasive reply. Along with the reply, he remitted the amount towards mesne profits up to 30 June 2013. Thereafter, he sent the amount towards mesne profits up to 30 September 2013 by money order. As the Original defendant failed to hand over possession of the suit property, the appellant instituted Regular Civil Suit No.

302 of 2013 before the trial Court seeking recovery of vacant and actual possession of the suit property, recovery of mesne profits until delivery of actual possession of the property, and a decree of permanent injunction. However, by judgment and decree dated 24 January 2019, the Id. Trial court dismissed the suit filed by the plaintiff appellant.

- 3.** Therefore, being aggrieved and dissatisfied by the said judgment and decree, the appellant has preferred the present appeal under Section 96 of the Code of Civil Procedure, 1908, on the grounds that :

  1. The judgment and decree passed by the Id. Trial Court are contrary to the provisions of law, erroneous, and based upon unsustainable reasons. The impugned judgment is therefore liable to be set aside.
  2. The impugned judgment is liable to be set aside on the face of the record. The Id. Trial Court passed the judgment without considering the submissions advanced by the appellant and the documentary evidence produced on record.
  3. The Id. Trial Court was required to frame proper issues on the basis of the pleadings of the parties and the documentary evidence on record. However, the Trial

Court failed to frame the issues appropriately and in accordance with law. On this ground, the impugned judgment and decree are liable to be set aside.

4. The entire management and administration of the suit property had been carried out by Dr. Chetan B. Jani, and, for a considerable period prior to the institution of the suit, the Respondent had been regularly paying the rent of the suit premises to him. Appropriate entries acknowledging such payments were also made in the Respondent's rent records, and the Respondent has admitted this fact in his deposition at Exh. 73. Accordingly, Dr. Chetan B. Jani issued the notice dated 13.06.2013 (Exh. 36) in accordance with the provisions of the Rent Act. Under the definition of "landlord" contained in Section 5 of the Rent Act, Dr. Chetan B. Jani is deemed to be the landlord of the suit premises on behalf of the Plaintiffs/Appellants.
5. Despite this, the Ld. Trial Court held that the notice at Exh. 36 was not in accordance with law and, on that basis, dismissed the Appellants' suit. The said finding is contrary to the provisions of law as well as the documentary evidence

produced on record. The impugned judgment is therefore erroneous and liable to be set aside.

6. Among the issues framed by the Ld. Trial Court at Exh. 28, Issue No. 2 pertains to whether the Respondent was a tenant in arrears of rent. Prior to the institution of the present suit, the Original defendant - respondent had instituted Regular Civil Suit No. 170 of 1986 before the Court at Anand. In the said suit, by mutual consent of the parties, the standard rent of the suit premises was fixed at Rs. 700/- per month by way of the compromise pursis at Exh. 56. The documentary as well as oral evidence on record clearly establishes that, after service of the statutory notice, after institution of the suit, and even until the final disposal of the suit, the Respondent failed to deposit the monthly rent/mesne profits regularly before the Court. Further, in the written statement filed at Exh. 10, the Respondent did not dispute the standard rent fixed under the compromise decree. Therefore, it is evident that the Respondent neither paid the standard rent to the appellant nor regularly deposited the same before the Court. Consequently, in accordance with law, the Respondent was a

tenant in arrears, having remained in default for a period exceeding six months. The Ld. Trial Court, however, failed to decide Issue No. 2 in favour of the Appellants. The said finding is contrary to law, erroneous, and has resulted in grave injustice. Accordingly, the impugned judgment is liable to be set aside.

7. Among the issues framed by the Ld. Trial Court at Exh. 28, Issues Nos. 1, 4 and 5 have been decided against the appellant without properly appreciating the oral and documentary evidence available on record. The findings recorded are therefore erroneous. A panchnama was prepared by the Court Commissioner appointed by the Ld. Court, which is on record at Exh. 17/2. The said panchnama clearly establishes that the portion of the suit property in the possession and occupation of the appellant has no proper or sufficiently wide access road. The Respondent has also admitted this fact in his deposition at Exh. 73.
8. Further, the Appellant intends to settle permanently in India and, therefore, has a bona fide and genuine requirement of the suit property for his own use and occupation. This fact is duly established by the documentary evidence on record.

However, the Ld. Trial Court failed to consider these material facts while deciding the issues. Consequently, the findings recorded on the aforesaid issues are contrary to law, contrary to the evidence on record, and have resulted in grave injustice. The impugned judgment and decree are therefore liable to be set aside.

9. Among the issues framed by the Ld. Trial Court, Issue No. 3 relates to unlawful subletting. The Respondent has not produced any documentary evidence whatsoever to establish that he is personally carrying on business in the suit premises. In fact, the Respondent is not conducting any business in the suit shop himself. Despite the evidence on record, the Ld. Trial Court failed to decide the said issue in favour of the Appellants. Consequently, the impugned judgment is erroneous, contrary to law, and has resulted in grave injustice. The judgment is therefore liable to be set aside.
10. Among the issues framed by the Ld. Trial Court at Exh. 28, Issue No. 5 pertains to the question of comparative hardship. Although the burden of proving comparative hardship lies upon both the Plaintiffs and the Original defendant, the Ld.

Trial Court erroneously held that the burden rested exclusively upon the Plaintiffs only. The Trial Court further arrived at findings which travel beyond the scope of the issue framed. Such findings are contrary to the oral as well as documentary evidence produced on record and are therefore unsustainable in law. Consequently, the impugned judgment and decree are liable to be set aside.

11. The Appellants/Plaintiffs have duly established their case in accordance with law by producing both oral and documentary evidence in support of all the issues framed by the Ld. Trial Court at Exh. 28. The appellant have successfully proved each of the said issues in their favour through cogent oral as well as documentary evidence. However, the Ld. Trial Court committed a serious error of law while deciding all the issues in favour of the Appellants. Accordingly, the impugned judgment and decree are liable to be set aside.
12. The Ld. Trial Court has erroneously and incorrectly interpreted the judicial precedents relied upon and produced by the Appellants/Plaintiffs and, on the basis of such erroneous interpretation, has decided

all the issues against the Appellants. The impugned judgment is contrary to the provisions of law, inconsistent with the judicial precedents placed on record, erroneous, and has resulted in grave injustice.

13. On the basis of aforesaid grounds the appellant prays to quash and set aside the impugned judgment and decree passed by the Ld. trial Court.

**4.** The respondent has appeared through his advocate and has filed cross objection / written reply vide Exh. 09 and contended that:

1. The appellant's appeal is not maintainable in law and is liable to be dismissed as it does not stand as per legal provisions.
2. The appellant's appeal is not made with bonafide intention and the appellant has no legal right or authority to file such appeal or application, therefore, the appeal and application are liable to be dismissed.
3. The appellant has filed this appeal without any reasonable cause, contrary to documentary evidence on record and facts on site conditions, and has made false statements only with a malicious intention to create false litigation. Therefore, the appeal is not maintainable and is liable to be dismissed.

4. The appellant has filed the appeal without any reasonable cause and hence the appeal is not maintainable and is liable to be dismissed.
5. The Ld. trial Court, after considering the documentary evidence produced in Civil Misc. No. 302/13 and the written/oral submissions of all parties, has passed a reasoned order strictly in accordance with law. Therefore, no question arises to interfere with the order of the Ld. trial Court. Hence also the appellant's appeal deserves to be dismissed. Where the order of the Ld. trial Court does not suffer from any defect or legal deficiency, there is no scope for interference at the appellate stage, and the Hon'ble Appellate Courts have also laid down several judgments on this point. Hence also the appeal is liable to be dismissed.
6. The facts stated by the appellant in paragraphs 1 to 3 of the appeal have already been duly adjudicated by the Ld. trial Court based on evidence. Even though the appellant is well aware of these facts, the appeal has been filed by making false statements; therefore, the appeal is not maintainable and is liable to be dismissed.
7. In paragraph 4 of the appeal, the appellant

states that the plaintiff stopped paying rent from 01/09/2012, that notice was issued, tenancy was terminated, possession was demanded, and that the plaintiff gave an evasive reply. All these facts are completely false and fabricated. The suit in Civil Misc. No. 302/13 was filed on such false claims, and the Ld. Court, after considering evidence and legal provisions, passed the order. Therefore, there was no reasonable ground for filing the appeal, and it is liable to be dismissed.

8. In grounds, the appellant alleges that the trial court's order is against law, erroneous, and against principles of natural justice, and that the order is prima facie liable to be set aside. However, issues were properly framed, considered by both parties, and evidence was recorded without objection at that stage. At the appellate stage, raising such false objections is not permissible; hence the appeal is not maintainable and is liable to be dismissed.
9. The facts stated in appeal are contrary to documentary evidence on record and cannot be accepted. Therefore, the appeal is not maintainable and is liable to be dismissed.
10. The appellant challenges Issue No. 2

regarding tenant in arrears, which is completely false. The respondent are long-standing tenants and have been regularly paying rent while carrying out business in the suit premises. No rent is outstanding. The appellant is aware of these facts but has still raised false disputes and failed to prove any of them in the trial court. Hence, the appeal cannot be accepted.

11. The appellant makes false allegations contrary to documentary evidence and panchnama. The panchnama conducted by the court shows that the respondent are carrying on business in the premises under the name "Trishar Trading Co." The appellant also falsely claims intention to reside permanently in India without evidence, whereas the appellant is a U.S. citizen and not an Indian citizen. Therefore, the appeal is based on false facts and is liable to be dismissed.
12. The appellant falsely alleges subletting. The respondent have always been in possession and running business in the premises. The court-appointed commissioner's report also confirms that the respondents' goods and business are present in the premises. No subletting has been proved or even alleged with evidence. Therefore, the appeal is not

maintainable.

13. The issue of hardship has been decided by the Ld. trial Court based on evidence. The appellant has been residing abroad for many years, and eviction would cause serious hardship to the respondent as the premises are their only source of livelihood, leading to severe financial distress. These facts have been duly proved before the trial court. Hence, the order is lawful and requires no interference, and the appeal is liable to be dismissed.
14. In grounds of the appeal memo, the appellant has made false allegations only to file the appeal. The Ld. trial Court has passed a detailed and lawful order after considering all evidence and issues. Therefore, the appeal is based on false and fabricated facts and is liable to be dismissed.
15. The grounds stated by the appellant of the appeal do not disclose any genuine reason for filing this appeal. The appellant has filed this appeal only with the intention of creating repeated and frivolous litigation, harassing and pressurizing the respondent by one means or another, and to defeat the lawful rights of the respondents. Therefore, the appeal is not maintainable and is liable

to be dismissed.

16. In paragraph the appeal memo, the appellant makes certain prayers/requests. The appellant has no legal right to make or obtain such prayers against the respondents, and such reliefs cannot be granted to the appellant as per law. Therefore, the appeal deserves to be rejected.
17. The True facts is that the disputed property situated at City Survey No. 127/B, Tika No. 3, Anand Municipality, Anand Taluka and District, was taken on rent by the respondent many years ago from Chimmanbhai Narayanbhai Patel at a monthly rent of Rs. 271/-. Since then, the respondent have been in continuous possession of the disputed premises since around 1986 and have been carrying on business therein without any interruption or objection from the original owner, the appellant, or any other person. The respondent have been carrying on business under the name "Tushar Trading Co." and continue to do so even today. The respondent also possess a valid Shop Act licence for the said premises.
18. Regarding the said property, the respondent had earlier filed a suit being

Civil Misc. No. 170/1986 before the Civil Court against the appellant and his late father Chimmanbhai Narayanbhai Patel for tenant rights and also filed an application for fixation of standard rent. After the death of the appellant's father, his legal heirs were joined as parties. Thereafter, in order to maintain cordial relations between the parties, a settlement was arrived at in the said proceedings. As per the settlement, the monthly rent of the disputed property was fixed at Rs. 700/-. Since then, the respondent have been regularly paying rent of Rs. 700/- per month along with half municipal tax to the appellant.

19. As the present appellant Dharmendra Bhai Chimmanbhai Patel resides abroad, his sister Smt. Harshaben Chetanbhai Patel has been regularly receiving the rent on his behalf, and rent has also been sent through money orders to her.
20. The appellant resides in the United States and holds a Green Card and citizenship of that country. Therefore, he has no bona fide requirement of the disputed premises for his business. However, the appellant has filed the present false suit and injunction application with a malafide intention to illegally evict the respondents, increase

rent, and extract premium (pagadi). The appellant has raised false and fabricated allegations contrary to the truth before the Ld. trial court.

21. The appellant has failed to prove Issues No. 2, 3, etc. framed by the Ld. trial court. The Ld. trial court, after considering all documentary evidence, oral evidence, cross-examination, and arguments, has passed a lawful and reasoned judgment dismissing the suit. Despite this, the appellant has filed the present appeal only with the intention of creating unnecessary litigation and misusing the process of law. Therefore, the appeal is not maintainable and deserves to be dismissed with costs.

**5.** Heard Id. Advocate for the parties. Ld. Advocate for the appellant – original plaintiff has submitted written arguments vide Exh. 17 whereas Id. Advocate for the respondent – original defendant submitted written arguments vide Exjh. 21. Having gone through the arguments advanced by both the sides, it appears that they are according to memo of appeal and reply to the appeal respectively and hence to avoid precious time of the court, it is not required to be discussed again.

**6.** This court has considered the judgment and

decree dated 24/01/2019 passed in RCS No. 302/2013. This court has also perused Record and Proceedings of the trial court as well as the memo of appeal. Following points falls for determination before this court.

- 1) Whether the appellant can point out that respondent is tenant in arrears?
- 2) Whether the appellant can point out that respondent has sub-letted the demise premises?
- 3) Whether the appellant can point out that the he is in "bonafide" (genuine) need to reclaim the suit property for personal use and that the respondent is in arrears of rent?
- 4) Whether the trial court has committed any error in facts or law while deciding the impugned judgment and decree?
- 5) What order?

**7.** Answer to the above points are as follows :

1. In the negative.
2. In the negative.
3. In the negative.
4. In the negative.
5. As per final order.

### **:: R E A S O N S ::**

**8.** Here at this juncture, the principle regarding

burden of proof is required to be discussed therefore judgment rendered by the Hon'ble Gujarat High Court in case of **Dhaval Enterprise Versus Gopal Industries 2023 (0) AIJEL-HC 247490** wherein it is held;

*"It is very well known principle that the party has to succeed on its own strength and not on the weakness of the other side. Applying this principle, in the present case, burden of proving the suit transaction and the amount due to the petitioner will remain on the petitioner till the petitioner discharges.*

*At this stage, Section 101 of the Indian Evidence Act, 1872, is worth considering. Section 101 of the Indian Evidence Act, 1972 reads as under:- 101. Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. The said section defines burden of proof. The burden of proof lies on party who substantially asserts the affirmative averments. A party is bound to prove existence of any fact and the burden cannot be shifted. The burden of proof and the onus of proof are having distinct meaning in the law of evidence. Burden of proof lies upon a person who has to prove the fact and which never shifts whereas the onus of proof shifts. Such a shifting is a continuous process in the evaluation of evidence. The initial burden of proving a prima facie case is cast upon the plaintiff. The onus shift on the defendant to adduce rebutting evidence to meet the case made out by the plaintiff."*

9. Therefore, considering the above ratio it is required to be noted that the burden of proof is on the person who asserts a fact. It is also a well settled principle of law that burden of proof never shifts but the onus to prove goes

on shifting. Thus, it was the duty of the plaintiffs to prove their case by cogent and convincing oral as well as documentary evidence.

10. Moreover, at this juncture, it would be apt to refer to Section 107 of the Code of Civil Procedure, which vests wide powers in the appellate court to determine a case finally, remand the matter, frame issues, and take additional evidence, as the circumstances of the case may require.

**SECTION 107 : Powers of Appellate Court**

*(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power- (a) to determine a case finally; (b) to remand a case; (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken.*

*(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.*

11. Considering the arguments advanced by both sides, and considering the record and proceedings of the Regular Civil Suit No 302/2013, it appears that the trial Court held that the appellant failed to establish a bonafide requirement of the suit premises for personal use and occupation, and also failed

to establish sub-letting by the respondent. The trial Court came to the conclusion that since the respondent deposited the arrears of the amount of rent within period of one month of filing of the suit, he was protected in view of Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "the Bombay Rent Act"). The suit was, therefore, dismissed.

- 12.** If we peruse the facts of the plaint filed by the appellant it appears that plaintiff has submitted for eviction of the property in the plaint that the first floor of the said property has become very dilapidated and it is in a condition that it may collapse at any time and cause damage to life and property. Therefore the tenancy has been terminated despite the defendant - respondent is not giving the direct possession of the suit property to the plaintiff. Furthermore, the defendant is not carrying their business in the said property but subletting the said property to different persons after receiving a huge amount of money from another person despite the defendant has no right to do so and thereby for that reason the plaintiff has all the legal right to terminate the tenancy. Furthermore, the plaintiff wants to construct a large building by obtaining the necessary permission on the

entire property to get good return from the said property. Thus, the plaintiff has in plaint mentioned that the plaintiff has a clear intellectual need for the suit property to construct a large new building.

- 13.** If we refer the relevant provisions of the The Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 which are as under;

**12 (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 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 may pass a decree for eviction in any such suit for recovery of possession.*

**SECTION 13 : When landlord may recover possession**

*(1)(e) that the tenant has, since the coming into operation of this Act [unlawfully sub-let] the whole or part of the premises or assigned or transferred in any other manner his interest therein; or*

*(g) that the premises are reasonably and bonafide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust]; or*

*(k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or*

*(h) that the premises are reasonably and bonafide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or*

*[(hh) that the premises consist of not more than two floors and are reasonably and bonafide required by the landlord for the immediate*

*purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or*

*[(hhh) that the premises are required for the immediate purpose of demolition ordered by any local authority or other competent authority; or] (i) that where the premises are land, such land is reasonably and bonafide required by the landlord for the erection of new.*

- 14.** The plaintiff has mainly emphasized in the testimony of his witnesses that the defendant has stopped paying the rent of the suit premises from 1st September 2012, due to which the plaintiff has sent a notice to the defendant on 13th June 2013. Thus, the defendant has not paid the rent of the suit premises for six months, therefore the defendant is a tenant in arrears. To prove this fact, the plaintiff has given testimony from Exh- 31. In which he has repeated the above facts on oath. However, it is worth mentioning that the plaintiff himself lives abroad and his sister Harshaben was handling the responsibility of collecting the rent on his behalf. Moreover, the plaintiff has examined the witness Dr. Chetan B. Jani the husband of Harshaben at exh 50 to prove his suit. During his cross-examination, it has been clearly admitted that the rent till 31st August 2012 has been collected by plaintiff's sister and his wife Harshabe and thereafter, for the period

i.e. from 1st September 2012 to 30th June 2013, a draft of Rs. 7000 has been sent by the defendant in the name of Dr. Chetan Jani and it has been accepted by him. Thus, in view of the above circumstances, the remaining arrears of rent has been paid to the plaintiff's representative before filing the suit and no objection has been raised in that regard. Thus, in these circumstances, the defendant does not appear to be a tenant in arrears. If we refer the relevant provisions of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 which are as under; regarding tenant in arrears is as under;

*Sec-12 (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 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 may pass a decree for eviction in any such suit for recovery of possession.*

- 15.** Thus, keeping in view the above legal provisions, evaluating the evidence presented in the present case, in the present case, the plaintiff has sent a notice to the defendant regarding tenant in arrears on 13th June 2013. In response to which the defendant has sent a draft of the outstanding rent amount on 17th June 2013 i.e. within four days of receiving the

notice. In view of that, the defendant gets protection under section 12(1). In these circumstances, the plaintiff has failed to prove the cause of action against the defendant regarding tenant in arrears in the suit.

- 16.** The plaintiff has not presented any evidence that the defendant has sub-let the suit premises. The plaintiff himself admits this fact in his evidence. The plaintiff has also not presented any evidence that the defendant is not using the suit premises for 6 months before filing the suit. The plaintiff has also not presented any evidence that the suit premises are dilapidated. The plaintiff himself resides in America permanently and there is no evidence or any circumstances on record to show that he has a bonafide requirement for this premises. To show that the plaintiff himself remains unwell and wants to build a new house in this property, the plaintiff has not presented any evidence regarding his health. Thus, the plaintiff has not presented any evidence in support of the reasons given by the plaintiff in his suit for eviction of the defendant from the suit premises. In these circumstances, the learned trial court, having properly evaluated the evidence in its judgment and recorded detailed reasons, has passed an order dismissing the plaintiff's suit,

which appears to be correct and legal.

17. Now, the principal contention which requires considerable emphasis and adjudication is the submission advanced by the learned advocate for the appellant, Mr. Dalwadi, that although the respondent has paid the rent during the suit, but after that, from 1st August 2018 to 31st October 2023 i.e. for 63 months, the respondent has not paid the rent and then paid the said rent cheque to the plaintiff in one go. Thereafter, he has not paid monthly rent from 1st November 2023 to 31st July 2024, which was paid by him in one go. Thus, it has been proved during the appeal that the respondent is not paying the rent regularly, due to which he has requested to allow the appeal by considering the respondent as a tenant in arrears.
18. In support of his argument, learned advocate Mr Dalwadi relied upon the judgment of the Hon'ble Supreme Court in the case of **Ganpat Ladha vs. Shashikant Vishnu Shinde, 1978 GLR page 502**. Furthermore, in support of his argument, he has also relied on the judgment given by the Hon'ble Gujarat High Court in the case of **Ramakant Govind Nadkarni v.s Dinsha Navroji**, which is published on **1996 (3) GLR page 465**.
19. I have gone through the above judgments. It is

clear from the documentary evidence produced by the appellant in this appeal under Order 41 Rule 27 of the Code of Civil Procedure and it is an undisputed fact that the respondent has not paid the rent on time and regularly during the period of the suit and the pendency of the appeal and has sent the rent cheques after 63 months and once he sent cheque after 9 months. Thus the respondent is clearly irregular in paying the rent. Each time he does not pay the rent for more than six months. Therefore, the question arises whether an eviction order can be made considering the irregularity of the respondent in paying the rent during the pendency of the appeal?

20. I have gone through the judgment of the Hon'ble Supreme Court rendered in the case of **Ganpat Ladha v. Sashikant Vishnu Shinde, 1978 GLR 502**, where in ratio regarding the protection available to a tenant under Section 12(3)(b) of the Bombay Rent Act. The Hon'ble Supreme Court held that a tenant seeking protection under Section 12(3)(b) must continue to pay or tender rent regularly throughout the pendency of the suit and appeal. Failure to comply with this statutory requirement deprives the tenant of the protection available under the Act.

**21.** In the said case, the tenant was admittedly in arrears of rent. The dispute before the Court was whether the tenant had complied with the conditions prescribed under Section 12(3)(b). The Hon'ble Supreme Court has held that the requirement of regular payment is mandatory and not discretionary. However, the factual position in the present case on hand is entirely different. In the present appeal, the learned Trial Court has categorically recorded a finding that the defendant was not a tenant in arrears. The said finding has been affirmed by this Court in this judgment as discussed above. Thus, the statutory default as prescribed under the provision of section 12(3) itself has not been established. The foundation upon which the ratio of Ganpat Ladha's case (supra) rests, namely the existence of default and the tenant's obligation to satisfy the conditions of Section 12(3)(b), is absent in the present case. It is true that during the pendency of the appeal the respondent did not deposit rent regularly and ultimately deposited rent for about Sixty Six Months in one lump sum. However, such conduct by itself cannot revive a ground of eviction which has already been rejected by this court in above discussed findings.

- 22.** Furthermore, the appellant has accepted the amount tendered by the respondent. Although the landlord subsequently issued a notice stating that the amount had been accepted under protest, such protest was communicated after a two months delay. The effect of such acceptance and the delayed protest would be a matter of evidence and appreciation by the competent Court in the suit. Therefore, the ratio of Ganpat Ladha's case (Supra) cannot be applied in its strict sense to the facts of the present case.
- 23.** Furthermore, I also gone through the judgment rendered in case of **Dinsha Navroji Mandhora, 1996 (3) GLR 465 (Guj)** which is not directly applicable to this case. Because the facts and legal issue of that case is completely different from the facts of present matter. In that case the landlord filed the suit on the ground of arrears of rent. The learned trial Court has held that the tenant was in arrears for more than six months. The learned trial Court further held that the tenant was not ready and willing to pay rent. The learned Appellate Court confirmed those findings. During the pendency of the suit and appeal, the tenant failed to pay rent regularly.

Therefore, the Hon'ble High Court held that the tenant lost the statutory protection under Section 12(3)(b).

- 24.** But here in this case, as discussed above, the learned trial Court held that the defendant is not a tenant in arrears as well as I have also confirmed the said findings. Therefore, the statutory default of paying rent itself has not been established. So the citations relied by the learned advocate for the appellant are not applicable in the case on hand.
- 25.** Thus, in view of the afore-stated facts and circumstances, the trial court has not committed any error on facts and law while passing the impugned judgment and decree and therefore no interference is warranted in the impugned order of the trial court. Therefore the points No. 1 and 2 are answered in negative and for point No. 3, following order is passed.

### **ORDER**

1. The present Appeal stands dismissed.
2. The order passed below Exh. 1 in RCS No. 302/2013 dated 24/01/2019 by Id. 3rd Additional Sr. Civil Judge, Anand, is hereby **confirmed.**

3. R & P to be sent to trial court along with copy of this judgment.
4. No order as to cost.
5. Decree be drawn accordingly.

Pronounced in open court today on 1st July, 2026.

Anand.

Date:01.07.2026

**(SANJAY LAVJIBHAI THAKKER)**

Principal District & Sessions  
Judge Anand.

**(Code : GJ-00588)**

RR PATEL PS