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Decided on : 15/06/2026
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**IN THE COURT OF 6TH ADDL. DISTRICT JUDGE,
AT JUNAGADH**

REGULAR CIVIL APPEAL NO.47 OF 2025

[IN REGULAR CIVIL SUIT NO.189 of 2022]

Exh.: -__

Anish Hanifbhai Gameti
Age : 31 Yrs., Occu.: Business,
R/o. Opp. Alankar Talkies,
near Baba Water Tanker, Jail Road,
Junagadh

APPELLANT:
(Original Defendant)

Versus

Abdullahbhai Ibrahimbhai Sida,
Age : 33 years, Occu.: Retired,
R/o. Block No.13, Gulzar Society,
Near Ghoripir's Masjid,
Zanzarda Road, Junagadh.

RESPONDENT:
(Original Plaintiff)

Subject: Appeal U/s. 96 of CPC against
the judgment and decree passed by the
Ld. Additional Civil Judge, Junagadh in
R.C.S. No.189/2022 dated 29.09.2025

APPEARANCES:

Ld. Advocate Mr.P. S. Vaghela for the Appellant.
Ld. Advocate Mr.S.H. Munshi for the Respondet.

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

(1) The present appeal has been filed by the appellant being aggrieved and dissatisfied by the judgment and decree passed by the Ld. Additional Civil Judge, Junagadh in R.C.S. No. 189/2022 passed on 29.09.2025 against the present respondent.

(2) The present appellant was the original defendant and present respondent was the original plaintiff in the Civil Suit filed before the Trial court. Therefore, for the brevity and convenience, the appellant and respondent are referred to as plaintiff and defendant respectively in this judgment.

(2.1) The brief facts of the facts is as under :-

The plaintiff filed the suit for eviction from the rented premises, recovery of arrears of rent, mesne profits, and other ancillary reliefs.

It is the case of the plaintiff that the plaintiff is the owner and possessor of the property, being a *delo* of open plot situated on Jail Road opposite Alankar Talkies, Junagadh, bearing City Survey No. 90/B (hereinafter

referred to as the “suit property/rented property”), which was let out to the defendant for scrap business by virtue of a written agreement dated 12.07.2016 at a monthly rent of Rs. 3,500/-, the four boundaries whereof are more specifically stated in paragraph 3 of the plaint.

It is the case of the plaintiff that the defendant was a tenant of the suit premises prior to the year 2016; however, as the need arose for procuring a licence, a written rent note was executed on 12.07.2016. Accordingly, the defendant was regularly paying the monthly rent. However, since 01.05.2020, the defendant has failed to pay the monthly rent despite repeated demands. The defendant, by showing one excuse or another of economic crisis, did not pay the rent and has failed to pay the same till date. It is further the case of the plaintiff that the defendant has stopped using the rented premises for more than six months and has sub-let the suit premises, without the consent or permission of the plaintiff, to Hashan Hushen Belim, thereby breaching the provisions of the Rent Act.

It is the case of the plaintiff that the defendant has not paid rent for the period from 01.05.2020 to 30.06.2022, i.e., for 26 months, amounting to Rs. 91,000/- at the monthly rent of Rs. 3,500/-. Thus, the defendant has become a tenant in arrears of rent for more than six

months, has kept the suit property in a non-use condition, and has sub-let the same. Therefore, the defendant is liable to be evicted from the suit premises. Accordingly, the plaintiff issued notice dated 29.07.2022 terminating the tenancy of the defendant, which was served upon the defendant on 30.07.2022; however, the defendant failed to comply with the notice, and hence the suit.

Thus, the plaintiff has sought the reliefs more specifically outlined in paragraph 11 of the plaint, wherein the plaintiff has prayed for an order directing the defendant to hand over vacant, peaceful, and direct possession of the suit premises to the plaintiff. Additionally, the plaintiff has prayed for recovery of arrears of rent of Rs. 91,000/- for the period from 01.05.2020 to 30.06.2022 at the rate of Rs. 3,500/- per month and thereafter for recovery of Rs. 5,000/- per month towards mesne profits/damages at market rate for damage caused to the plaintiff, along with such other reliefs as may be deemed fit.

(3) Upon service of summons, the defendant appeared through his learned Advocate and filed written statement-cum-objections vide Exh. 9, whereby the defendant denied the averments made in the plaint in toto and further

contended that the suit is not legally maintainable, that the plaintiff has suppressed material facts so as to mislead the Hon'ble Court, and that the plaintiff has not approached the Court with clean hands.

It is submitted that, as stated by the plaintiff, the defendant has been occupying the suit premises for scrap business pursuant to a written agreement dated 12.07.2016 executed before Notary Mr. B. M. Raval at a monthly rent of Rs. 3,500/-, and the defendant has been regularly paying the same.

It is further contended that the plaintiff has stated the true facts in paragraph 4, and it is further submitted that the defendant has never failed to pay the rent. Till execution of the written agreement dated 12.07.2016, no other written agreement was executed, and the rent was being paid as between relatives, for which no receipts were issued by the plaintiff. As per the instructions of the plaintiff, the rent was paid to Mohanbhai, owner of Shakti Pan Shop situated opposite the rented premises. The said Mohanbhai expired on 15.01.2023. It is contended that the defendant has never been in default of payment of rent.

It is further contended that if the rent had not been paid since 01.05.2020, then there was no

reason for issuance of notice only on 22.07.2022. In reality, according to the defendant, the said notice is false and fabricated. It is also contended that the rent mentioned in the notice is Rs. 4,000/-, whereas as per the rent note dated 12.07.2016, no earlier rent note was executed and the rent was paid regularly.

It is further contended that after receipt of the notice, the defendant personally met the plaintiff and inquired into the matter, but the plaintiff refused to accept the rent. According to the defendant, the actual position can be brought on record if a *Rojkam* is drawn as provided under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, for which the defendant has no objection.

It is further contended that the defendant carries on scrap business in the suit premises, which is the sole source of income of the defendant.

It is further contended that during the pandemic period of Corona commencing from 01.05.2020, business activities had come to a standstill and the said period of one and a half years was difficult for the entire world. It is further contended that, as stated in paragraph 2 of the rent note dated 12.07.2016, the defendant has been a tenant since the year 2005, has been

carrying on business therein, and has regularly paid the rent amount. It is further contended that the defendant has regularly paid rent till 31.12.2022 and therefore the question of the defendant being a tenant in arrears does not arise, and the possession of the suit premises continues with the defendant.

In a nutshell, the defendant has prayed for dismissal of the suit with special costs.

(4) In the present case, the Trial Court has framed the following issue vide Exh.11 in vernacular language and the same is as under :-

:- ISSUES :-

1. Whether the plaintiff proves that the defendants is a tenant of the suit property at monthly Rent of Rs.3500/-?
2. Whether the plaintiff proves that the defendants is in arrears of rent for more than Six months?
3. Whether the plaintiff proves that the notice of demand issued by the plaintiff is legal ad valid?
4. Whether the suit notice is legal and valid?
5. Whether the plaintiff is entitled to get relief as prayed for?
6. What order ad decree?

7. Whether plaintiff proves that defendant sublet the suit premises?

(4.1) My Findings on the above issues are as under :

ISSUE NO.1	In Affirmative
ISSUE NO.2	In Affirmative
ISSUE NO.3	In Affirmative
ISSUE NO.4	In Affirmative
ISSUE NO.5	Partly In Affirmative.
ISSUE NO.6	As per final Order.
ISSUE NO.7	In Negative.

(5) The following oral as well as documentary evidence has been produced by the PLAINTIFF, which is as under :-

ORAL EVIDENCE :-

Ex. 22	Deposition in form of affidavit of examination in chief of plaintiff-Abdullabhai Ibrahimhai Sida
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DOCUMENTARY EVIDENCE :

Ex. 14	Copy of Tax bill issued by Municipal corporation, Junagadh in the name of plaintiff
Ex. 15	Office copy of notice dated 22.07.2022 sent by Ld. Advocate S. H. Munshi on behalf of the plaintiff addressed upon the defendant
Ex. 16	Postal payment receipts
Ex. 17 Ex. 18	Postal acknowledgment cards of RPAD
Ex. 19	Copy of rent note dated 12.07.2016

	executed by plaintiff in favour of defendant
Ex. 20 Ex. 21	Track consignment reports
Ex. 29	True copy of statement dated 22.05.2021 of the defendant recorded before the Police
Ex. 24	Closing purshis

The following oral as well as documentary evidence has been produced by the defendant :-

ORAL EVIDENCE :-

Ex. 26	Deposition in form of affidavit of examination in chief of Defendant – Anish Hanifbhai Gameti (Kathi)
Ex. 30	Deposition in form of affidavit of examination in chief of Defendant's witness – Lalitbhai Kanaiyalal Sevkani Employee of saree shop of Chandrakant Hotchand situated in Circle Chowk

DOCUMENTARY EVIDENCE :

Ex. 33	Closing purshis
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(6) After considering the pleadings of the parties, the Ld. Additional Civil Judge/Court, Junagadh (hereinafter referred to as the "Ld. Trial Court") has partly allowed the suit filed by the plaintiff and therefore, the appellant / defendant has preferred the present appeal and preferred to allowed the appeal and set aside the judgment and decree passed by the Ld. Trial Court.

(7) Further, the appellant has filed the memorandum of appeal reiterating the stand taken before the Trial Court and has further submitted that there is no indication in the rent deed dated 12.07.2016 as to the date from which rent became due. It is further contended that the respondent has failed to prove the agreed rent of Rs. 3,500/- and, instead, sought recovery of rent at the rate of Rs. 4,000/-. It is specifically noted in the document at Exh. 19 that no earlier rent deed had been executed. It is further contended that the respondent has failed to prove the alleged arrears of rent, as no evidence to that effect was adduced by the plaintiff, and no rent receipts were ever issued by the plaintiff. Thus, in a nutshell, the appellant has prayed for allowing the appeal and setting aside the impugned order of the Trial Court.

(7.1) Per contra, upon service of notice, the respondent appeared through his learned Advocate and filed written objections vide Exh. 10, wherein the respondent denied the allegations made in the appeal memorandum and further submitted that the learned Trial Court has committed no error of law or fact and has passed the impugned judgment after proper appreciation of the evidence on record.

It is further contended that the defendant has admitted execution of the rent note at Exh. 19 and that it stands proved by the document at Exh. 29 that the defendant stopped paying rent. The said document has been admitted by the appellant. It is also contended that the appellant admitted receipt of the notice issued by the plaintiff but neither replied to the said notice nor deposited the rent before the Hon'ble Court, and such fact has also been admitted by the defendant. According to the respondent, the plaintiff has duly proved the issues framed by leading cogent evidence.

It is further contended that the defendant has raised a false story regarding payment of rent to one Mohanbhai, whereas no such person existed and the plaintiff never issued any oral or written instructions to pay rent to such person. It is contended that if such person had expired, no death certificate thereof has been produced, nor have his legal heirs been examined as witnesses. Instead, the defendant examined a bogus witness namely Lalitbhai, who has no knowledge of the facts after the year 2019, whereas the cause of action and rent dues pertain to the year 2020 onwards.

It is further contended that the defendant has not deposited the rent amount before the Hon'ble Court and, therefore, is not entitled to

any protection under the law. Thus, the respondent has prayed for dismissal of the appeal with costs.

(8) On perusal of record, it appears that the Ld. Trial Court has given finding about sub-letting the suit premises in Negative vide issue no.7. However, plaintiff has not filed any cross-objection. In the same way, the trial court has held that monthly rent of suit premises is Rs.3,500/- by answering issue no.1 in this regard in Affirmative and the appellant has not challenged the same in the present appeal. Hence, the said issues have attained finality as the same has not been challenged.

(9) Heard, the argument of Ld. Advocates of parties. Following points are raised to decide the appeal :-

1. Whether the appellant proves that the trial court erred in holding that the defendant is in arrears of rent for more than six months ?

2. What Order and Decree?

(9.1) My findings to the above points are as under:

1. In Negative.

2. As per final order.

: - R E A S O N S : -

(10) The learned Advocate for the appellant has filed written arguments vide Exh. 11, wherein the appellant has reiterated the stand taken in the memorandum of appeal and has further argued that in the agreement dated 12.07.2016, the plaintiff has not stated that any rent was due as on that date, and that the respondent has failed to prove the agreed rent of Rs. 3,500/-, while instead he is getting rent at the rate of Rs. 4,000/-p.m.

It is further argued that in the deed at Exh. 19, it is specifically recorded that no earlier written rent note had been executed. It is contended that the respondent has failed to lead any evidence with respect to the alleged arrears of rent and has not issued any rent receipts. According to the appellant, the suit has been filed on mere assumptions. It is further contended that the respondent has failed to prove the alleged sub-letting of the property, has examined a fabricated witness, and that the suit is barred by limitation.

In a nutshell, the appellant has prayed for setting aside the impugned order dated 29.09.2025 and allowing the appeal.

(10.1) On the other hand, the learned Advocate for the respondent/plaintiff has filed written arguments vide Exh. 12, wherein he has reiterated the grounds taken before the trial court be also considered at part of submission in this appeal. It is stated that the suit was filed for eviction under Sections 12(2)(a) and 13 of the Rent Act. It is stated that the learned Trial Court has considered the ground under Section 12(3)(a) of the Rent Act and has rightly relied upon the provisions thereof. It is further argued that if the tenant fails to pay rent within one month of service of notice and no dispute regarding standard rent is raised under Section 11, then as per the mandatory provisions of Section 12(3)(a), the tenant is liable to be evicted from the premises.

It is further argued that the appellant was issued notice vide Exh. 15, which was served vide Exhs. 17, 18, 20, and 21, and the same has been admitted by the defendant in his deposition at Exh. 26. It is contended that despite receipt of the notice, the defendant failed to pay the rent within one month thereof, nor deposited the same before the Hon'ble Court either during the suit proceedings or in appeal, nor raised any dispute regarding standard rent, nor replied to the notice. According to the respondent, all these

facts have been admitted by the defendant in his deposition, and thus the defendant is liable to be evicted under Section 12(3)(a) of the Rent Act.

It is further argued that it is an admitted fact between the parties that the deed at Exh. 19 was executed and that the agreed rent was Rs. 3,500/-. It is also admitted that the notice at Exh. 15 was received, and the said notice specifically states that rent was due from 01.05.2020. It is further contended that for recovery of arrears of rent, the plaintiff had filed criminal proceedings against the defendant, wherein the defendant made a statement produced at Exh. 29 admitting the arrears of rent. Thus, according to the respondent, it stands proved that rent was due for more than six months as on the date of notice at Exh. 15.

It is further pointed out that the defendant admitted in cross-examination in his deposition at Exh. 26 that no rent had been paid after receipt of notice at Exh. 15, nor was any amount remitted by money order, nor deposited before the Hon'ble Court, nor was any reply given to the notice. It is further argued that in view of such admissions and relying upon the precedent reported in AIR 2003 Page 3995, the defendant is proved to be a tenant in arrears of rent and has failed to pay rent till date.

It is further argued that in an attempt to escape the consequences of default, the defendant has raised a defence that rent was paid to one Mohanbhai; however, no such person is proved to be in existence, nor has any death certificate been produced despite the defendant alleging that such person has expired, nor have his legal heirs been examined. On the contrary, the defendant has examined a bogus witness who has no knowledge of the facts of the suit. It is contended that as per settled legal principles, where the defendant alleges payment of rent, the burden lies upon the defendant to prove such payment, as laid down by the Hon'ble Allahabad High Court.

The Ld. Advocate of the plaintiff has orally made submission that the defendant has not paid the rent for more than 6 months in spite of serving of notice. He has argued that the suit property was rented to the father of defendant for before 2001. He has also stated that it is undisputed fact that the present appellant/original defendant was protected tenant under the Bombay Rent Act.

It is further submitted that the legal precedents produced along with the written arguments vide Exh. 38 before the learned Trial Court may also be considered. Thus, the respondent has prayed for dismissal of the appeal with costs.

(11) I have gone through the appeal memo along with the papers and judgment and decree passed by the learned trial court. I have gone through the arguments and considering the rival contention which is narrated in the appeal memo as well as written arguments.

POINT NO. 1 :-

(12) Before discussing the merits of the case and dwelling into facts and evidence produced, it is required to discuss about the power of the appellate Courts provided under Order 41, Rule 33 of the code, which reads as under :-

“33. Power of Court of Appeal– The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the

decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.

Illustration:-

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X, appeals, and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y."

(13) At this juncture, it is beneficial to refer the observations made by Hon'ble Supreme Court in the case of Malluru Mallappa (D) Thr. LRs. Vs. Kuruvathappa reported in 2020(4) SCC 313, regarding scope and power of appellate court, in para- 16, 17, 18 & 19, as under :-

"16. Order XLI Rule 31 of the CPC provides the guidelines for the appellate court to decide the matter. For ready reference Order XLI Rule 31 of the CPC is as under: -

"31. Contents, date and signature of judgment.- The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

17. In Vinod Kumar v. Gangadhar, 2015 1 SCC 391 this Court has reiterated the principles to be borne in mind while disposing of a first appeal, as under:-

"15. Again in B.V. Nagesh v. H.V. Sreenivasa Murthy [(2010)13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-5)

"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is

reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179 (2001) 1 SCR 948] , SCC p. 188, para 15 and Madhukar v. Sangram [(2001) 4 SCC 756] SCC p. 758, para 5.)"

18. In Shasidhar and Ors. v. Ashwani Uma

Mathad and Anr., (2015) 11 SCC 269 it was held as under:-

"21. Being the first appellate court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law."

19. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court.

Expression of a general agreement with the reasons given by the trial court would ordinarily suffice."

(14) It is undisputed fact that the suit property being a *delo* of open plot situated on Jail Road opposite Alankar Talkies, Junagadh, bearing City Survey No. 90/B was let out to the defendant for Rs.3,500/- p.m. It is also undisputed facts that the said suit property was originally rented to the deceased father of defendant on oral basis for doing business of scrap. It also admitted facts that the written agreement was done on 12-07-2016 about the suit land and the and before 11 years the suit property was possess by the defendant as tenant and since than he has been doing business. It is also undisputed that the suit property was given on oral basis for monthly rent of Rs.3,500/-. The Ld. Advocate of the plaintiff has argued that the suit property was rented to the father of defendant before 2001. He has also stated that it is undisputed fact that the present appellant/original defendant was protected tenant under the Bombay(Now Gujarat) Rent Act.

(15) The plaintiff has come with the case that the defendant had stopped to give rent from 01-05-2020 and inspite of repeated demand, till

date, the same has not been given. Therefore, the defendant has become tenant in arrears for more than 6 months. so, the notice for the same was issued to the defendant on 29-07-2022 for termination of tenancy , for the payment of arrears of rent and to hand over possession of suit land. The said notice was received by the defendant but the defendant has nor acted as per notice.

While it is contended by the defendant that there is no due amount of rent till date. It is contended that due to relation between them, the plaintiff has never given receipts for receiving rent. It is also contended that as per the instruction of plaintiff, the defendant used to pay the monthly rent to Mohanbhai Tirasrit, who was running the shop in the name of Shakti Pan, whose shop situated at opposite of defendant's dela(suit property) and the plaintiff used to collect the rent from him. It is also contended that the plaintiff actually receives monthly rent of Rs.4,000/- and there is no due rent . Therefore, the defendant is not in arrears of rent.

(16) The plaintiff has produced the document written between present plaintiff and defendant at Exh.19 on 12-07-2016. It depicts that the suit property is lent for monthly rent of Rs.

3,500/- .On perusing the demand notice produced at Exh.15 dated 22-07-2022, it appears that it is stated the defendant stopped payment of rent from 01-05-2020 and not using using the rented premises for more than 6 months. It is also demanded arrears of rent for the period from 01-05-2020 to 30-06-2022 total 26 months with rent of Rs.3,500/- p.m. totaling Rs 91,000/- The demand is also made to give vacant possession of suit premises. The defendant has not denied that the said notice was not served upon him.

(17) The plaintiff has admitted in his deposition ,Exh,22, in cross-examination that the father of defendant used to pay monthly rent of Rs.3,500/- but no receipts were given for the same. It is also admitted by the plaintiff that after demise of defendant's father, the defendant has been doing business. The question was asked to the plaintiff by the Ld. Advocate of defendant that on what basis are you saying that the defendant has not paying rent from 01-05-2020? To this question, the plaintiff reply that he had filed application before the police station for the same. He has denied that he had told Mohanbhai Nirasrit to collect the rent. Further,the defendant has admitted in cross examination ,Exh.26, that the plaintiff had not given any written instruction to him to pay rent

to some third person. He has also admitted that in the year-2020, he had not paid rent for one year and therefore, plaintiff and her sister had given application at "A" Division Police Station against him. He has also admitted that he had neither given reply to the notice nor paid any rent to plaintiff. He has also admitted that he neither made money order for payment of arrears of rent nor deposited any rent in court. So, the defendant himself has admitted that he has neither paid any arrears of rent to plaintiff nor deposited in court after receiving the demand notice. Further, the statement given by the defendant before the police of "A" division Police Station, Junagadh is produced at Exh.29. Wherein, he has stated that due of lockdown, his business was not running good and therefore, he was not able to pay the rent for the one years. Hence, in view of above discussion, it appears that the notice for demand of arrears of rent was given to the defendant as per S.12. of Bombay Rent Act and in spite of receiving the same, the defendant had neither reply to the notice nor paid the arrears of rent to the plaintiff or deposited in the court. At this juncture, it would be benefited to narrate S.12 of Bombay Rent Act.

12. No ejectment ordinarily to be made if 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.

[(1-A) Where by reason of riot or violence of a mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to, - (a) the standard rent and permitted increases due for the premises, (b) recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remain so destroyed, or unfit.] [(1-B) Notwithstanding any thing contained in this Act, where by reason of earthquake or any other natural calamity any material part of premises is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to, - (a) standard rent and permitted increases due for the premises. (b) recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remained so destroyed or unfit.]

(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 (IV of 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 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 suit for recovery of possession.**] *[This sub-section of Section 12 was substituted for the original by Bombay 61 of 1953, section 8(1).]*

(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,-

(i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and

(ii) pays costs of the suit] *[[This portion was substituted for the portion beginning with the words 'and thereafter continues' and ending with the words 'also pays costs of the suit as directed by the Court' by Gujarat 7 of 1985. ,*

section 2.]], as directed by the Court.

(4)[Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.] *[Sub-section (4) of Section 12 was inserted by Bombay 61 of 1963, section 8 (2).]*

Explanation. - 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 be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under subsection (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

In the present case, the plaintiff had issued notice, Exh.15, to the defendant demanding arrears of rent for the period from 01-05-2020 to 30-06-2022 on 22-07-2022 and otherwise to terminate the tenancy. Therefore, the notice issued at Exh.15 is said to be given under S.12 (2) of Bombay (Now Gujarat) Rent Act. However, the defendant has stated that he has been paying rent regularly and there is no question about arrears of rent. It is also stated that the plaintiff was not giving rent receipts. The plaintiff has admitted in deposition that the father of defendant used to pay rent of Rs.3500/- but he was issuing the rent receipt. But, on perusing the statement of defendant Exh.29 on 22-05-2021, he has stated that he had not paid the rent of last one year. Hence, it can be inferred that the defendant has not paid the arrears of rent for more than 6 months inspite of receiving of notice. Therefore, the present case would

fall under category of S.12 (3) (a) of Bombay(Gujarat) Rent Act. The the Hon'ble Supreme Court in AIR 1967 (0) SC 1078 Manorama S.Masurekar Versus Dhanlaxmi G.Shahas held in para-3 to 6 as under.

"3. Sub-section (1) of sec. 12 imposes general restriction on the landlord's right to recover possession of the premises so long as the tenant pays or is ready and willing to pay the rent and observes and performs the other conditions of the tenancy. Sub-section (2) of sec. 12 imposes the further restriction that no suit for recovery of possession on the ground of non-payment of rent shall be instituted by the landlord until the expiration of one month after a notice in writing demanding the rent. Sub-section (3) (a) provides for the consequences which will follow where the rent is payable by the month, there is no dispute regarding the amount of the rent, the rent is in arrears for a period of six months or more, and the tenant neglects to make payment within one month of the service of the notice under sub-s . (2). In such a case, the tenant cannot claim any protection under sub-sec. (1) and the Court is bound to pass a decree for eviction. At the material time. sub-sec. (3) (a) of 12 read:

"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 increase 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-sec. (2) the Court may pass a decree for eviction in any such suit for recovery of possession."

The word "may" in this sub-sec. has the effect of "shall". In Bhaiya Punjalal Bhagwanddin V/s. Dave Bhagwatprasad Prabhuprasad 1963-3 SCR 312, this Court held that where the requirements of sub-sec. (3) (a) were satisfied, the Court was bound to pass a decree for eviction. The section has now been suitably amended, and the word "shall" has been substituted for the word "may" by Maharashtra Act No. 14 of 1963.

4. If the conditions of sub-sec. (3) (a) are satisfied, the tenant cannot claim any protection from eviction under the Act. By tendering the arrears of rent after the expiry of one month from the service of the notice under sub-sec. (2), he cannot claim the protection under sub-sec. (1). It is immaterial whether the tender was made before or after the institution of the suit. In a case falling within sub-sec. (3) (a), the tenant must be dealt with under the special provisions of sub-sec. (3) (a) and he cannot claim any protection from eviction under the general provisions of sub-sec. (1).

5. The landlord is vested with the right to recover possession of the premises if the rent is in arrears for a period of six months or more "the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-sec. (2)", and the other conditions of sub-sec. (3) are

satisfied. This right cannot be defeated by showing that the tenant was ready and willing to pay the arrears of rent after the default, but before the institution of the suit. In effect, the appellant asks us to rewrite the sections and to substitute in it the following conditions: "the tenant neglects to make payment thereof until the date of the institution of the suit." It is not possible to rewrite the section in the manner suggested by the appellant.

6. The appellant's case fell precisely within sub-sec. (3) (a) and she could not obtain immunity from eviction by tendering the rent before the institution of the suit."

(18) Further the Hon'ble Gujarat High court in 2026 (0) AIJEL-HC 252772 Aminaben Nurmamadbhai Versus Ghelabhai Govindbhai in para -14 has held as under:

"14. If we go through scheme of Rent Act, more particularly, 12, 12(1), 12(2) and 12(3), what is discernible that tenant should always be ready and willing to pay arrears of rent and if it is more than six month, he has to comply with statutory notice within one month from date of receipt and pay arrears of rent or standard rent. Documentary evidence on record which is discussed by learned Appellate Court is sufficient to prove that Aminaben executed rent note which sufficiently establish that she was tenant and has relationship of landlord and tenant of demise premises. Learned Appellate Court in righteous way decided that learned Trial Court has committed serious error in understanding provisions of Rent Act as well as evidence on record. Since in the case on hand, provision of **section 12(3)(a) of the Rent Act** is attracted when in revisionist tenant has not deposited any amount of rent before expiry of one month of statutory notice and on the day on which suit was filed, issue of eviction was no more res-integra and crystallized in favour of landlord. Therefore, according to this Court, learned Appellate court has not committed any error which goes to the root of the case and to take different view."

(19) Further more, the Ld. Advocate on the side of respondent has cited judgment reported in

(1) 1995 LawSuit(Guj) 279 Santokbhai Narbheram Barot Vs. Ramdas Dwarkadas and (2) 2004 (1) G.L.H. (U.J.) 5 Samiben Suleman Vs. Bharvad Bai Khimiben Nanubhai and Ors. are on the same line that where the requirements of S.12(3)(a) are satisfied, the eviction decree is to be follow.

(20) Therefore, as per S.12 (3)(a) of the Rent Act, if the tenant failed to pay the arrears of rent within one month after receiving the notice, the court is bound the pass decree of eviction. In the present case also , it is proved that the defendant is in arrears of rent for more than 6 months and failed to pay the same as discussed herein above. Hence, the trial court has rightly allowed the relief for handing over the possession of suit premises to the present plaintiff. So, the trial court has not erred in finding that plaintiff has entitled to get the vacant possession of suit land.

(21) In view of above discussion , I give my answer to point Nos. 1 in Negative.

Point No.2 :-

(21) Considering the answer given in point Nos. 1 , I pass following final order.

O R D E R

1. The present Regular Civil Appeal No.47/2025 filed by the present appellant i.e. original defendant is hereby dismissed .
2. The Judgment and decree passed by the Ld. Additional Civil Judge, Junagadh in Regular Civil Suit No.189/202 dated 29/09/2025 is hereby confirmed.
3. Decree be drawn accordingly.
4. If any interim order passed, be stands vacated.
5. If any interlocutory application is pending stand disposed of.
- 6 Parties shall bear their own costs of this appeal.
7. Original R & P of Regular Civil Suit No.189/2022 be sent back to the Ld. Trial Court along with the copy of the Judgment of this appeal.

Pronounced and signed in the open Court today on this 15th day of June, 2026.

Date: 15.06.2026.
JUNAGADH

(AMIT RAMESHBHAI RANA)
6th ADDL. DISTRICT JUDGE
JUNAGADH
[GJ00965]