

GJAH020103692023



**IN THE CITY CIVIL COURT AT AHMEDABAD
CIVIL SUIT NO.811 OF 2023**

Order below Exhibit-6-7 (Notice of motion application)

1. The plaintiff has filed the suit for possession and for recovery of mesne profit.
2. Short facts of the application :

The plaintiff is the owner of the suit property bearing Municipal Census No. 1128, 1128/1, City Survey No. 2687 (admeasuring 40.13.42 sq. mtrs., Kalupur Ward No. 3, Shaikh Hirji Pol, Ahmedabad City, Taluka: Ahmedabad, District and Sub-District: Ahmedabad), which was originally purchased by her late parents vide registered Sale Deed dated 03.01.2003.

(a) Following the demise of her father on 16.10.2006 and her mother during the pendency of earlier litigation, the plaintiff became the sole absolute owner of the property. It is further submitted that the at the relevant time, the defendant herein was in need of shop premises for rent and had therefore, approached the mother of the plaintiff for taking the shops situated on the ground floor of the suit premises in rent. In 2014, the plaintiff's mother let out two ground-floor shops to the defendant for selling cosmetics at a monthly rent of Rs. 24,000/- for a period

of one year.

- (b) Due to relocation to the U.S.A., the plaintiff and her mother appointed a relative, Mr. Noor Mohammed Fateh Mohammed Maniyar, solely as a care-taker and rent collector.
- (c) The defendant paid rent for only one month (23.10.2014 to 23.11.2014) and remains in continuous arrears totaling Rs. 24,72,000/- up to 23.06.2023, failing to produce any further rent receipts as required under the tenancy terms.
- (d) Without the plaintiff's knowledge, rent collector Noor Mohammed fraudulently executed a Sale Deed dated 17.10.2014 registered with the office of the Sub-Registrar, Ahmedabad at Sr. No.5041 for Rs. 12,00,000/- in favor of one Mohammed Zuber Zakirbhai Maniyar using a forged Power of Attorney, a transaction to which the defendant mala fide stood as a witness.
- (e) The plaintiff filed Civil Suit No. 895/2015 for cancellation of the fraudulent sale deed, wherein the defendant was impleaded under Order-I Rule 10 CPC; the suit was resolved via compromise purshis Exh. 66 dated 11.09.2021, cancelling the sale deed subject to paying Rs. 15,00,000/- to Noor Mohammed from property sale proceeds.
- (f) Although the plaintiff fully paid the Rs. 15,00,000/- as directed, she cannot sell the suit property because the defendant refuses to vacate the two shops, preventing

prospective buyers from purchasing with tenancy encumbrances.

(g) Instead of vacating as requested for the plaintiff's personal use, the defendant filed Civil Suit No. 1709/2021 seeking tenancy protection, despite taking contradictory stands regarding ownership in previous court filings.

(h) The defendant committed a material breach of tenancy terms by being a witness to the fraudulent sale deed, failing to pay rent for over six months, and unlawfully holding possession.

(i) Having established a strong prima facie case, balance of convenience, and continuous cause of action within the court's territorial jurisdiction, the plaintiff prays for an order directing the defendant to maintain status quo and restraining him from creating any third-party rights over the suit property. Hence, the plaintiff's Notice of Motion application may be allowed.

3. The Ld. Advocate for the plaintiff has also filed a purshish at Exh.9 stating that, if court give stay in this matter and defendant suffer any loss because of stay then the plaintiff is personally responsible for loss suffer by the defendant. The Plaintiff has deliberately suppressed vital background details regarding prior judicial admissions and existing court orders to mislead the Court. The suit property comprises two ground-floor shop premises (one formed by converting an earlier latrine-bathroom space) situated at

Sheth Hirji ni Pol, Kalupur Ward No. 3, City Survey No. 2687, Municipal Census No. 1128 & 1128/1, City Taluka, Ahmedabad District. The original owners, Mohammad Hussein Fatehmohammad Maniyar and his wife Abedaben, resided in the USA, while the Plaintiff resided in Canada. Management and rent collection were delegated to the original owner's brother, Nurmohammad Fatehmohammad Maniyar. In 2009, the property was let out to the Defendant upon payment of a security deposit of Rs.50,000/- at an initial monthly rent of Rs.6,500/-. Subsequently in 2014, both ground-floor shops were leased together to the Defendant at a consolidated monthly rent of Rs.24,000/-.

The Defendant holds actual, continuous, and lawful physical possession as a tenant, running a cosmetics business as his sole source of livelihood. It is further submitted that Rent was paid regularly to Nurmohammad until his demise in 2016, and thereafter to his son Salim and nephew Zuber, for which receipts were generated. The Defendant also spent approximately Rs.80,000/- towards the medical treatment of Salim Nurmohammad, which was mutually agreed to be set off against rent. Despite business closures during the COVID-19 pandemic (2020–21), rent was tendered to Zuber, though receipts were withheld. Following Abedaben's demise in 2017–18, the Plaintiff became the sole heir. In a previous suit (C.S. No. 895/2015) filed by Abedaben against Nurmohammad, Abedaben explicitly admitted that two ground-floor shops were rented out to the present Defendant at a monthly rent of Rs.25,000/-. The Defendant filed an application under

Order I Rule 10 C.P.C. on 11.09.2019 due to competing rent demands. That suit was ultimately resolved via a consent memo (Karardad Purshis Exh. 66) dated 11.08.2021, where the Plaintiff was recognized as owner, and again expressly acknowledged the Defendant's lawful tenancy.

Following the settlement in C.S. No. 895/2015, the Plaintiff and her Power of Attorney holder, Haiderbhai, began unlawfully harassing, threatening, and attempting to forcibly dispossess the Defendant, including filing false police complaints at Kalupur Police Station. Consequently, the Defendant filed C.S. No. 1609/2021 before the City Civil Court, Ahmedabad. On 17.03.2023, the Court granted an interim injunction on merits in favor of the Defendant, restraining the Plaintiff from disturbing the Defendant's peaceful tenant possession until final disposal. The Plaintiff's claim that the Defendant breached tenancy terms or owes alleged rent arrears amounting to Rs.24,92,000/- for the period from 23.12.2014 to 23.05.2023 is entirely false, baseless, and emphatically denied. The Defendant is a lawful, regular-paying tenant fully protected by a subsisting court injunction, and the Plaintiff has no legal right, cause of action, or entitlement to any injunctive or monetary relief.

4. Ld. Advocate Mr. K. R. Pandya for the plaintiff has orally argued in the present application.

Ld. Advocate Mr. A. S. Saiyad for the defendant has filed the Written Arguments vide Exh.19, wherein he has reiterated the Written Reply filed by the defendant and

denied all the allegations made in the Notice of Motion Application. Therefore, therefore, the same is not reiterated herein to avoid repetition.

In support of the defendant's arguments, Ld. Advocate for the defendant relied on the Judgment which are as under:

1. In the judgment of *Hon'ble Gauhati High Court in Review Petition No.187/2017* reported in *On the death of Ibrahim Ali Barbhuiya his Legal heirs Atiqur Rahman Borbhuria and Ors. Vs. Musstt Rustana Begum W/o Late Abdul Kuddus Barbhuiya & Ors.*
2. In the judgment of *Hon'ble Himachal Pradesh High Court reported in 2005 Supreme(HP) 306* between *Bhagwati Rampal Vs. State Bank of India*
3. In the judgment of *Hon'ble Manipur High Court reported in 1961 Supreme(Gau) 46* between *Konjjengbam Babudhom Singh Vs. Hemam Romonyaima Singh*
4. In the judgment of *Hon'ble Gauhati High Court reported in 1998 (1) GauLJ 22* between *Gadadhar Barman Vs. Ranendra Mohan Pal*
5. I have heard the arguments of both the parties. I have perused the record.
6. Before advertng to the merits of the case, it is pertinent to rely on the settled legal position governing temporary injunctions. In the case of **Anand Prasad Agarwal v. Tarkeshwar Prasad**, (2001) 5 SCC 568, the Hon'ble Supreme Court categorically held that it is impermissible

for a court to conduct a "mini-trial" at the stage of granting a temporary injunction. Furthermore, it is a foundational principle of civil jurisprudence that three essential ingredients must coexist to warrant the grant of an interlocutory injunction: A Prima Facie Case in favor of the applicant; The Balance of Convenience tilting in favor of the applicant; and Irreparable Loss or Hardship that cannot be adequately compensated by way of damages.

7. As per the case of the plaintiff, that the present suit has been filed by the plaintiff for eviction and recovery of possession along with the arrears of rent and mesne profit against the defendant – tenant. It is the case of the plaintiff that she is the owner of the suit property by way of ancestral succession and that the defendant is the tenant therein who has defaulted in rent since November 2014.
8. As per the defence of the defendant, the defendant has contended that he had already paid rent to the power of attorney holder of the plaintiff, i.e uncle of the plaintiff Noormohammed Fatehmohammed Maniyar. The defendant has further contended that he had filed C.S. No.1609/2021 wherein an order of injunction was passed to restrain the present plaintiff for dispossessing the defendant without due process of law.
9. It is undisputed that the present plaintiff is the landlord and the defendant is the tenant of the suit premises. Hence, the relationship between the plaintiff and the defendant is

admitted. The title of the plaintiff over the suit property is ancestral. Now, the question is whether the payment of rent made to the power of attorney holder discharge the defendant's rent liability, is a matter of trial. Further ownership and tenancy status, there must be established clear legal interest of the plaintiff preserving the suit property.

It is also on record of this court that the present defendant filed C.S. No.1609/2021 wherein, the then court has passed order below injunction application and granted illegally dispossession. Now, as far as the case of the plaintiff is concerned, the plaintiff is seeking remedy against the defendant to maintain status quo with regard to the suit premises. If the defendant creates third party right or creates physical nature and character of the suit property during the trial it will create unnecessary third party right and encumbrance and will lead to multiplicity of proceedings causing irreparable injury to the plaintiff.

10.Hence, in view of the above observation without expressing any opinion on the merits, both the parties are required to be directed to maintain status quo regarding the physical nature, character and possession of the suit property as it exists today till the final disposal of the suit. Hence, the following order is passed:

ORDER

(1) The present Notice of Motion (Exh.6/7) is hereby partly allowed.

(2) Both the parties are directed to maintain status quo

regarding the physical nature, character and possession of the suit property as it exists today till the final disposal of the suit.

Pronounced in the open court on 11th day of August, 2026.

Date :- 11.08.2026
Place:- Ahmedabad.

[Altaf M. Memon]
Chamber Judge,
City Civil Court, Ahmedabad.
(Unique I.D. Code No.GJ00674)

#MJV