

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 196 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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Approved for Reporting	Yes	No
	✓	
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BHARATBHAI VENILAL SHAH & ORS.
 Versus
 RAGHUBHAI RAMBHAI PATEL

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Appearance:
 MR MEET A SHAH(9933) for the Applicant(s) No. 1,2,3,4

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 10/03/2026
JUDGMENT

1. The present Civil Revision Application is filed under Section 29(2) of the Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “the Act”) by the applicants-appellants-original defendants assailing the judgment and order dated 23.01.2026 passed by the learned 2nd Additional District Judge, Navsari in Regular Civil Appeal No.2 of 2020.

2. Heard learned advocate Mr. P.A. Mehd with learned advocate Mr. Meet A. Shah for the applicants.

3. Parties are referred to as per their original position in the suit. Applicants are the original defendants and respondent is the original plaintiff in the suit proceedings.

4. The brief facts of the case are as under:-

4.1. Plaintiff-respondent herein had filed a suit for recovery of the suit property situated at Municipal Ward No.6, Old House No.204 (New house No.75), Navsari on the ground of sub-letting, non-user, reasonable and bonafide requirement of the suit property as well as on the ground of arrears of rent. The case of the plaintiff in the plaint is that the suit property was let out in the year 1985 for the purpose of Kirana and general stores. The rent was agreed at Rs.500/- per month. Municipal taxes, electric burning charges were to be borne by the tenants. The tenants were not supposed to transfer or sub-let the suit property. The plaintiff alleged that the suit property has been remained in non-used condition for a period of more than 5 years preceding the date of the suit. It is also alleged by plaintiff

that defendants have sub-let the suit property to any third party who is storing food-grains in the suit property under the supervision of a third person. Plaintiff sought possession of the suit property on the ground that the plaintiff and his son want to start departmental store in the suit property and for that reason, requires the suit property for personal and bonafide requirement. Defendants appeared in the suit and contested the suit by filing Written Statement at Exhibit-12. Defendants denied the allegations of plaintiff and contended that the suit property was rented out to Venilal Jekchand Shah i.e. the father of defendant Nos.1, 2 and 4 and husband of defendant No.3 at a monthly rent of Rs.401/-. Upon death of Venilal Jekchand Shah on 13.03.1981, defendants are doing business in the suit property as tenants and the purpose of letting was to carry on business activities. Defendants further denied the need of plaintiff and his son for having a departmental store in the suit property and also denied the allegation of sub-letting and non-use by defendants.

4.2. Plaintiff examined himself at Exhibit-18. Plaintiff examined his son Bhadresh Raghubhai Patel at Exhibit-52 and also examined the officer of Navsari Nagarpalika at Exhibit-64 as well as the officer of the District Supply Officer at Exhibit-70. Plaintiff produced documentary evidence in support of his case. Defendant No.2 examined himself at Exhibit-90 and produced rent receipts of previous years as well as copy of registered licence in the name of defendant No.1. Learned trial Court framed following issues at Exhibit-15.

“(1) Whether the plaintiff proves that the monthly rent of the suit premises is Rs.500/-?”

“(2) Whether the plaintiff proves that the suit premises have not been used without reasonable cause for the premises let for a continue period of six month immediately the day of suit?”

“(3) Whether the plaintiff proves that the defendants without or have subletted the suit premises to any one against the terms and condition of the agreement therefore he is entitled to get the possession u/s.13(1)(f) of the Act?”

“(4) Whether the plaintiff proves that the suit property is required for reasonable and bonafide requirements of the plaintiff himself & his family members?”

“(5) Whether the plaintiff proves that the defendants are in arrears of rent for more than six months?”

“(6) Whether the plaintiff proves that he has issued the notice to the

defendant as per the provision of Rent Act?

(7) Whether the defendants prove that the notice of demand issued by the plaintiff is not legal and valid?

(8) Whether the defendants prove that they were and are ready and willing to pay the due amount of rent?

(9) Whether the plaintiff is entitled to get the vacant possession of suit premises?

(10) What order and decree?”

4.3. Learned trial Court after appreciating oral as well as documentary evidence decreed the suit on issue No.2 i.e. non-user of the suit property and did not grant decree of possession on other issues. Being aggrieved and dissatisfied with the impugned order and decree dated 30.11.2019, defendants-tenants filed Regular Civil Appeal No.2 of 2020 before the learned 2nd Additional District Judge, Navsari. The First Appellate Court framed following points for consideration.

“(1) Whether the Ld. Trial Court was justified in holding that the respondent proved non-use of the suit premises for a continuous period of six months immediately preceding the suit as contemplated u/s.13(1)(k) of Rent Act?

(2) Whether the findings recorded by Ld.Trial Court suffers from perversity or legal infirmity warranting interference in appeal?

(3) What order?”

4.4. After hearing the parties, learned 2nd Additional District Judge dismissed the appeal and affirmed the judgment and decree passed by learned trial Court. Being aggrieved and dissatisfied with the impugned judgment and order passed by learned 2nd Additional District Judge, Navsari, the applicants are before this Court by way of present revision application.

5. Learned advocate for the applicants while addressing issue involved in the present revision application, has mainly contended that both the learned Courts below have committed an error of law and have failed to appreciate the fact that despite the burden of proving the ingredients of Section 13(1)(k) of Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 decreed the suit by holding that the defendants have kept the premises in non-used condition for a period of more than 6 months preceding the date of suit. Learned advocate for the applicants has contended that the suit property was being rented out for the business purposes to Venilal Jekchand Shah. The

defendants are legal heirs of Venilal Jekchand Shah and carrying on business of storing food-grains in the suit property. The use of suit property is godown for storing food-grains. It is further contended that the plaintiff has not produced any evidence such as electricity bill, Municipal tax bills of the suit property to establish that the premises have remained in a non-used condition. The son of the plaintiff has admitted in the cross-examination that it is true that at present defendants are in possession of the suit property. In the notice dated 27.07.2011, the plaintiff has not stated that the suit premise is being kept in a non-used condition and thereby the possession is sought for under Section 13(1)(k) of the Act. Taking this Court to the averments made in the plaint, it is submitted by learned advocate for the applicants that plaintiff has stated that some hazardous material is being kept in the suit property. Plaintiff has taken two contrary stands in the plaint. On one hand, plaintiff is alleging that defendants have kept premises in a non-used condition and on the other hand, it is alleged by plaintiff

that some hazardous material is kept in the suit property. It is further contended that the suit premises were taken on rent for the purpose of godown use and therefore, there is no need to have any electricity in the suit property and therefore, the question of non-production of electricity bills for the consumption of energy by defendants-tenants is of no relevance.

5.1. To buttress his submission, learned advocate for the applicants has relied upon Section 102 of the Indian Evidence Act, 1872 and by relying upon the said Section, it is submitted that the burden of proof in the suit if not discharged, suit would fail. In the present case, the plaintiff has miserably failed to establish non-use of the suit property and therefore, both the Courts below have committed an error of law as well as committed an error of not appreciating the defence of defendants-tenants.

5.2. In support his submission, learned advocate for the applicants has placed reliance upon the decision in the case of

Shah Ochhavlal Motilal And Another Versus Kansara

Dhanlaxmi Becharlal reported in ***1985 (0) AIJEL-HC 211150***

and he has placed reliance upon paragraph Nos.5 and 6 of the said decision, which are reproduced as under:-

“(5) The onus to prove non-user is on the plaintiff and the plaintiff cannot succeed on the weakness of the defendant. The plaintiff has examined only one witness Niranjani Becharlal Kansara ex. 42. He has stated that he manages the property of her mother Dhanlaxmiben the plaintiff. He has stated that both the defendants are serving and the suit-premises have remained closed since 8 to 10 years. He has given his evidence in Jul. 1977. In cross-examination he has stated that he did not know if the defendant was a tenant in the suit premises even prior to the purchase by the plaintiff; he has also stated that he and his elder brother were managing the property since 4 to 5 years and he did not know that the defendant was a tenant since 22 years. He is residing at Dabhoi and not at Baroda where the suit premises is situate. He has no idea whether he went to the defendant for collecting rent. In para 13 on his deposition he has stated that he did not go to the suit premises and he has not study or experience of scrap business. There is another tenant on the first floor but the witness admits to be having no knowledge and was not able to say if the tenant on the first floor was inducted before 11/2 years. He did not know what was the rent; he did not know whether there was any tenant prior to this tenant Indravadan on the first floor. Thus from his evidence it is clear that he does not reside in Baroda where the suit premises are situate. He does not even know who is the tenant on the first floor of the suit premises prior to Indravadan who had come only 11/2 years back. Thus he has no personal knowledge whatsoever regarding non-user by the defendant. Even though the plaintiff has come out with a case that the tenant defendant No.2-the father is

also serving. There is no evidence whatsoever that he has been serving.

(6) . On the other hand the evidence of defendant No.2 is very categorical that this business is the only source of livelihood. In cross-examination it was suggested that he was serving with Kansara Panch. However, he has denied the same. He has stated that he has been doing honorary work for that Kansara Panch without any remuneration. Thus the fact remains that there is no evidence that defendant No.2 has been doing any other gainful work or service and it is impossible to believe that for a long period from 1964 to 1971 the defendant would not be doing any business. This circumstance lends support to his version that he had been using this premises for his scrap business. The lower courts have failed to appreciate the nature of this scrap business as a small trader. Witness Niranjanbhai has been managing the property since last 5 years as per his deposition recorded in 1977. Otherwise also he has no personal knowledge and is not residing at Baroda and does not visit the suit premises. Therefore his say regarding non-user is without any merit. Thus the plaintiff has utterly failed to lead any reliable evidence on the question of nonuser. On the other hand the defendant's case regarding user is supported by the inherent strong circumstance that he is not shown to have been engaged in any other gainful activity He is a small trader; he does not have the income to pay the income-tax and admittedly there was no electricity in the suit premises till the suit was filed. In fact the suit premises are a sort of a godown (Vakhar) and he did not have any licence or certificate for doing this business right from 1950 to 1972. That shows that the business was of a very small scale. For such a business it is likely that he did not maintain accounts or did not maintain proper records. His explanation that the account books and bill books were eaten away by white ants may or may not be true and the bills produced by witness Mangubhai at Exhibit 66 to 110 may or may not be reliable. But the fact remains that this defendant is not shown to be engaged in any other business or gainful activity and that strong circumstance clearly lends support to his version that this

scrap business in the suit premises is the only source of his livelihood. Compared with the evidence of witness Niranjanbhai for the plaintiff who has no personal knowledge whatsoever the evidence of this defendant at Exhibit 62 clearly proves that the allegation of the plaintiff regarding nonuser is not borne out by evidence on record and therefore the findings of the lower courts are clearly illegal and not according to law.”

5.3. By relying upon the aforesaid decision, learned advocate for the applicants has submitted that the Co-ordinate Bench of this Court has held that when the plaintiff has failed to prove non-use of suit property as required under Section 13(1) (k) of the Act, the concurrent finding of both the Courts below against the tenants is required to be quashed and set aside. On the basis of lack of evidence led by the plaintiff-landlord, the decree of possession being perverted and illegal, is required to be quashed and set aside. Except above, no other submissions are canvassed by learned advocate for the applicants.

6. I have considered the submissions canvassed by learned advocate for the applicants and perused the paper-book. The plaintiff-respondent had filed a suit for possession of the suit

property on the ground of arrears of rent, non-use, reasonable and bonafide requirement of plaintiff and his son for running a departmental store in the suit property and sub-letting. It is the specific case of the plaintiff in the plaint as well as in the oral deposition that the suit property was let out for running a grocery and general store in the year 1985 on conditions that the tenants would use the suit property only for the business of grocery and general store. Before the institution of the suit, plaintiff had issued a notice dated 27.07.2011 calling upon the tenants to vacate the suit property as the defendants have committed breach of the terms and conditions of the tenancy by sub-letting the suit property to a third person. This notice was issued to defendant No.2 only. Plaintiff in his deposition recorded at Exhibit-18, has reiterated the facts which are mentioned in the plaint. In the cross-examination, the plaintiff's version is that defendants are not using the suit property for a continuous period of six months preceding the date of the suit, has not been contradicted. A reply is given by plaintiff that

possession of suit property is with defendant as on today i.e. on 13.03.2014 (recording of cross-examination). Mere retaining a possession without carrying on business in a suit property which is let out for commercial purpose would not mean that tenant was carried on business in the suit property preceding the date of suit. The crucial period is continuous period of 6 months preceding the date of suit. Any business activity carried on post suit is irrelevant when the case falls within the purview of Section 13(1)(k) of the Act. Section 13(1)(k) of the Act is reproduced which is as under:-

“13. When landlord may recover possession.- (1) Notwithstanding anything contained in this Act [but subject to the provisions of Section 15] a landlord shall be entitled to recover possession of any premises if the Court is satisfied.-

(a) to (j)

(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

(l)”

7. The son of the plaintiff-Bhadresh Raghubhai Patel has also deposed at Exhibit-52 and supported the version of his father.

On perusal of his cross-examination, it appears that there is no question put to the witness with regard to the non-use of the suit property. The controversy which has been tried to be highlighted by learned advocate for the applicants in the present revision is with regard to the purpose of letting.

8. At this stage, it would be appropriate to observe that in the background of the facts, it hardly matters the purpose of letting of the suit property. Even if the contention of the applicants herein is taken on face value that the suit property was used for godown purposes and therefore, the electric consumption and the payment of electric consumption charges is hardly of any importance, such contention though sounds attractive but has no force for the reason that plaintiff in the plaint, and in the examination-in-chief, has stated that the premises have remained in a non-used condition for a period of 5 to 6 years preceding the date of the suit and there is no effective cross-examination on the question of non-use the suit property by the defendants-

tenants. Over an above, defendant No.2 in his cross-examination recorded at Exhibit-90, has very conveniently and smartly avoided reply to a question with regard to the disconnection of electric supply before 4 years. Defendant No.2 has admitted that the suit property was having electric connection at the relevant point of time but does not know whether electric supply has been disconnected from suit property. The notice Exhibit-45 also bears the address of the suit property which remained undelivered to defendant No.2. Once the allegation of non-use of the suit property has not been controverted by tenants either in the cross-examination of landlord or his witness, the burden of proving non-use is duly established and tenant has to establish by leading documentary evidence that there were business activities in and premises have not remained in non-used condition. Even if the case of defendants is accepted that the purpose of let out was a godown, tenants-defendants have not produced any evidence such as bills, vouchers, stock register and other documents which are in power and possession of

defendants. When the tenants have withheld the best available evidence that they were carrying on business in the suit property preceding the date of suit, the landlord's case of seeking possession on the ground of non-use cannot be dismissed.

Section 29 (2) of the Act is reproduced which is as under:-

“29. Appeal.- (1)

(2) No further appeal shall lie against any decision in appeal under sub-section (1) but the High Court may, for the purpose of satisfying itself that any such decision in appeal was according to law, call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit.”

9. The scope under Section 29 (2) of the Act is limited. The High Court can interfere in the decision rendered by the Courts below under Sub-Section (2) of Section 29 of the Act on the satisfaction that the decision of the Courts below is either perverted or against the evidence on record. The learned trial Court as well as learned Appellate Court while decreeing the suit, has considered and discussed the evidence in detail and has come to a conclusion on appreciation of facts that the electricity has been cut since more than 4 years and defendant No.2 is not

aware about the disconnection of the electric supply from the suit property. The learned First Appellate Court has also appreciated the entire evidence and has arrived at a conclusion that the case of non-use alleged by plaintiff-landlord is established and on appreciation of evidence, the appeal is dismissed.

10. In catena of decisions, the proposition of law is laid down that the High Courts should not interfere with the concurrent findings of Courts below by re-appreciating the evidence even if another view is possible on the appreciation of the same evidence. Moreover, re-appreciation of evidence under Section 29(2) of the Act is not permissible unless the decision is so perverted and there is an apparent error of law, the High Courts should be reluctant in interfering the concurrent findings of fact arrived at by two Courts below.

11. So far as the decision in the case of ***Shah Ochhlavlal Motilal And Another (supra)*** which has been relied upon by

learned advocate for the applicants is concerned, the same will not be helpful to the case of the applicants as the facts before the Co-ordinate Bench of this Court reveals that in the cross-examination of the landlord, it has come on record that the landlord did not know that the defendant was a tenant in the suit premises prior to the purchase of the property by plaintiff, the plaintiff, in the cross-examination, stated that he did not know that defendant was tenant since 22 years. He has also stated that he did not got to the suit premises. The evidence revealed that that the landlord does not reside in Baroda where the suit premises is situated and had no personal knowledge regarding non-user by the defendant. In the present case, defendants have not cross-examined the plaintiff on the issue of non-user and the version of the plaintiff-landlord regarding non-user of the suit premises has gone unchallenged in the oral evidence, therefore, both the Courts below have come to a conclusion that the landlord has discharged the onus to prove non-user.

12. In view of the above observations, as applicants could not point out any illegality in both the judgments and decrees, the present application lacks merits and the same is dismissed. No order as to costs.

RINKU MALI

(D. M. DESAI,J)

Original copy of this order has been signed by the Hon'ble Judge.

Digitally signed by: RINKU MALI(HC01574), PRIVATE SECRETARY, at High Court of Gujarat on 16/03/2026 14:22:14