

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL REVISION APPLICATION NO. 357 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**      *Sd/-*

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| Approved for Reporting | Yes | No |
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PALA JAYSHRIBEN DHIRAJLAL &amp; ORS.

Versus

NURUDIN SALMANJI GANDHI

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Appearance:

MR. MEHUL SHAH, SENIOR COUNSEL WITH  
 MR TANMAY B KARIA(6833) for the Applicant(s) No. 1,2,3,4  
 MR MAULIK R SHAH(6385) for the Opponent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT****Date : 14/08/2026****JUDGMENT**

1. Heard Mr. Mehul S. Shah, learned Senior Counsel assisted by Mr. Tanmay Karia, learned advocate for the petitioners and Mr. Maulik R. Shah, learned advocate for the respondent - Caveator, at length.

2. **RULE** returnable forthwith. Mr. Maulik Shah, learned advocate waives service of notice of Rule for and on behalf of the respondent.

3. With the consent of the learned advocates for the respective parties, the present matter is taken up for hearing.

4. 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 Rent Act***') against the judgment and decree dated 15.04.2026 passed by 3<sup>rd</sup> Additional District Judge, Jamnagar in Regular Civil Appeal No.66 of 2017, whereby it has allowed the appeal filed by the respondent herein, thereby, passed a decree of eviction against the petitioners.

5. The petitioners herein are the original defendants - tenant and respondent herein is the original plaintiff - landlord. For the sake of convenience, the parties will be referred to as per their original position in the suit.

### **SHORT FACTS**

6. The plaintiff-landlord instituted Regular Civil Suit No.596 of 2008 seeking a decree of eviction on the ground that the defendant-tenant has breached the terms of the rent note, has sublet the suit shop in favour of a third party, has come into arrears of rent, and has put up a permanent construction without the prior permission of the landlord.

6.1 The defendant appeared and filed his written statement and refuted the allegations made in the plaint. It is the case of the defendant that he has neither sublet the suit shop nor put up any permanent construction as alleged. It is also contended that he is not in arrears of rent, as he deposited the rent in the parallel suit proceedings instituted by him against the plaintiff and others.

6.2 The Trial Court framed several issues and, having found that the plaintiff neither proved subletting nor a permanent construction, as well as failed to prove that the tenant was in arrears of rent, dismissed the aforesaid suit *vide* judgment and decree dated 25.09.2017 in Regular Civil Suit No.596 of 2008.

6.3 Being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the Trial Court, the plaintiff preferred Regular Civil Appeal No.66 of 2017, wherein the Appellate Court framed few points for determination.

6.4 After hearing the parties, the Appellate Court found that the plaintiff has successfully proved subletting and the issue of arrears of rent. Accordingly, it has allowed the aforesaid appeal by passing a decree of eviction *vide* its impugned judgment and eviction decree. Thus, in view of the eviction decree passed by the Appellate Court, the defendant – tenant is before this Court by way of this revision application.

### **SUBMISSIONS OF THE PETITIONERS - DEFENDANTS - TENANT**

7. Mr. Mehul S. Shah, learned Senior Counsel assisted by Mr. Tanmay Karia, learned advocate has made the following submissions: -

7.1 The Appellate Court has committed a grave error in law by holding that the plaintiff has successfully proved the issue of subletting. The Appellate Court has not arrived at the definite conclusion that Bharatbhai, who happens to be the

brother of the tenant, is in exclusive possession of the suit shop, which is a *sine qua non* to pass a decree of eviction on the ground of subletting.

7.2 The Appellate Court has committed a manifest error in law by ignoring the overwhelming evidence brought on record by the defendant to show that he is still in exclusive possession of the suit shop and has never lost control over the suit shop / rented shop.

7.3 The Appellate Court has not appreciated the oral and documentary evidence led by the defendants and, ignoring those material evidence on record, arrived at an erroneous finding which requires to be corrected by this Court while exercising the powers under its revisional jurisdiction. As per the oral evidence of the defendant's witnesses examined at Exhibits-108, 113, and 117, it has been proved on record that the defendant is running the shop at the rented premises, as the certificate issued under the Shops and Establishments Act, the telephone connection, and the submission of income tax returns are of the suit shop.

7.4 The Appellate Court has not appreciated the well-settled position of law that the burden of proof is upon the landlord to prove that the tenant has sublet the premises by handing over exclusive possession in favour of a third party for monetary consideration. Such a burden, in the present case, was not discharged by the landlord, as he was unable to prove that

Bharatbhai, who happens to be the brother of the defendant, is in exclusive possession of the suit shop.

7.5 The Appellate Court has also committed a manifest error by not appreciating the fact that merely because Bharatbhai was found at the suit shop would not *ipso facto* prove that the defendant-tenant has lost control over the suit shop. The landlord has failed to bring on record any material evidence to show that the tenant has lost control over the suit shop. There is no breach of the terms of tenancy at the hands of the tenant. Merely because the defendant is also running two other shops at different places within the city of Jamnagar would not be a ground available to the landlord to evict the tenant, and the question of hardship could not have been gone into while examining the aspect of subletting.

7.6 The Appellate Court has committed jurisdictional error while concluding that the landlord has successfully proved the issue of subletting. The pronouncement of law by the Hon'ble Apex Court on this issue is completely gone by and contrary to settled position of law, the issue of subletting was decided by the Appellate Court, which requires to be corrected by this Court in its revisional jurisdiction.

7.7 The Appellate Court has not properly appreciated the fact that the tenant was not in arrears of rent as on the date of the filing of the suit, inasmuch as in his reply to the notice of the landlord, the tenant had categorically averred that he had cleared the arrears of rent by depositing the amount of rent in

the suit proceedings instituted by him against the plaintiff, i.e., Regular Civil Suit No. 559 of 2008. There is nothing on record to show that such amount was not deposited by the tenant as claimed in his reply.

7.8 The Appellate Court has failed to notice that a copy of the judgment dated 27.02.2015 passed by the 11<sup>th</sup> Additional Senior Civil Judge, Jamnagar in the aforesaid Regular Civil Suit No. 559 of 2008 was submitted as evidence in the eviction suit at Exhibit-102, wherein there is a reference to the money order sent by the defendant to the plaintiff recorded in para-5 of that judgment, i.e., Exhibits-35 to 37.

7.9 The Appellate Court ought to have appreciated that the defendant has not neglected to make payment of rent and as such, has made full payment and cleared the arrears as on the date of the filing of the eviction suit. Merely because receipts of deposit of arrears of rent amount were not produced on record by the defendant - tenant, it would not mean that he has not deposited the rent; rather, as per the cross-examination of the plaintiff-landlord, he was not able to confirm as to whether such amount was deposited or not.

7.10 The judgment and decree passed by the Trial Court assigning cogent reasons ought not to have been disturbed by the Appellate Court without following the principles of law propounded by the Hon'ble Apex Court in this regard on the issue germane to the matter.

7.11 To buttress his arguments, Mr. Shah, learned Senior Counsel would rely upon the following decisions: -

I. ***S.F.Engineer Vs. Metal Box India Limited & Anr.*** reported in **(2014) 6 SCC 780**;

II. ***Resham Singh Vs. Raghbir Singh & Anr.*** reported in **(1999) 7 SCC 263**;

III. ***Dev Kumar (Died) Through LRS. Vs. Swaran Lata (Smt) & Ors.*** reported in **(1996) 1 SCC 25**;

IV. ***Laxmikant Revchand Bhojwani & Anr. Vs. Pratapsing Mohansingh Pardeshi (deceased through His Lrs.)*** reported in **(1995) 6 SCC 576**

V. ***Udyomal Nathumal Vs. Premchand Trikamdas Baswani*** reported in **1980 (1) GLR 869**;

7.12 By making the above submissions, Mr. Mehul S. Shah, learned Senior Counsel would request this Court to allow the present revision application.

### **SUBMISSIONS OF THE PLAINTIFF - LANDLORD**

8. *Per Contra*, Mr. Maulik R. Shah, learned advocate for the respondent has vehemently opposed this application by making the following submissions: -

8.1 The Appellate Court has neither committed any jurisdictional error, nor any perversity in the findings of fact recorded by it, whereby this Court should not interfere with

the findings of fact recorded by the Appellate Court while exercising its revisional jurisdiction.

8.2 The Appellate Court, in para-7.9 of its impugned judgment, has categorically recorded that the suit shop is in the possession of Bharatbhai and he is doing the business of selling watches, and the defendant is not doing business at the suit shop. With this set of findings of fact recorded by the Appellate Court, it has concluded that the plaintiff has clearly proved that the suit shop is sublet.

8.3 The rent note dated 06.07.1979 produced at Exhibit-42 clearly prohibits the defendant from subletting the suit shop in favour of anyone. The witnesses examined by the plaintiff at Exhibits-69 and 76 respectively have categorically deposed before the Trial Court that only Bharatbhai is doing business at the suit shop and it is in his possession. It is also deposed by those witnesses that the defendant is not using the suit shop, as the business is run by his brother, namely, Bharatbhai.

8.4 The initial burden to prove the fact that the defendant sublet the suit shop in favour of his brother, i.e., Bharatbhai, was successfully discharged by the plaintiff by examining the witnesses who happen to be either neighbors and or were known to both the sides. The onus was shifted upon the defendant to discharge his burden to prove that Bharatbhai was not exclusively using the suit shop, but the defendant failed to discharge such a burden.



8.5 The witnesses examined by the defendant at Exhibits-108, 113 and 117 have admitted in their cross-examination that they do not have any personal knowledge as to who is actually doing business at the suit shop. The documentary evidence submitted by the defendant did not prove that he was / is actually doing business at the suit shop; rather, it was admitted in his cross-examination that he has two other shops wherefrom he is doing business.

8.6 Once the findings of fact recorded by the Appellate Court about the exclusive possession of Bharatbhai satisfied the criteria set out by the Hon'ble Apex Court in its various decisions to prove the factum of subletting, then the burden was successfully discharged by the plaintiff and this Court should not re-appreciate the evidence on record. The finding of fact is neither perverse nor grossly erroneous then it should not be disturbed by this Court in revision.

8.7 It is a settled position of law that merely because a different view is possible than the view taken by the Appellate Court, in its revisional jurisdiction, this Court should not take such different view.

8.8 The Trial Court committed a manifest error in assuming that the plaintiff has not successfully discharged his burden of proving that Bharatbhai is in exclusive possession of the suit shop; rather, it was incumbent upon the defendant to prove how Bharatbhai was running business from the suit shop. The defendant remained silent in his deposition, thereby, not discharged the burden cast upon him.

8.9 Since the relationship between the defendant and Bharatbhai happens to be that of real brothers, the landlord would not be in a position to prove the fact that the exclusive possession of the suit premises by Bharatbhai was for consideration, and as such, as per the settled position of law, the Court is required to presume that once exclusive possession is established on record, it is for consideration.

8.10 The Trial Court has also committed a manifest error by ignoring the fact that the summons/notice of the suit was received by the defendant at his other shop than the suit shop, and he never disputed the fact that he was doing business from a shop other than the rented shop or suit shop. This itself proved that the tenant was not occupying the rented premises even at the time of institution of suit.

8.11 The Appellate Court has correctly appreciated the fact that the defendant has not brought on record any evidence to show that as on the date of the suit, he was not in arrears of rent; thereby, the Appellate Court passed a decree of eviction for arrears of rent as well. It is an undisputed fact that the defendant has not brought any documentary evidence on record to show that upon service of the statutory notice by the plaintiff upon him at (Exhibit-46), he has cleared the arrears of rent either by sending money order or depositing the amount with the Court.

8.12 It is also not in dispute that there was no issue of standard rent raised by the tenant, and the rent was paid month by month, then the case was governed under Section

12(3)(a) of the Rent Act. Once it has been proved on record that the defendant has failed to clear the arrears of rent within 30 days from the receipt of the statutory notice, an eviction decree is required to be passed and was correctly passed by the Appellate Court.

8.13 The Trial Court has erroneously believed that, as per the pleadings of the defendant, he has cleared the arrears of rent by depositing the amount in a parallel suit proceeding as referred to above, but failed to notice that to prove such a fact, the defendant has not produced any material evidence on record. The defendant has admitted in his cross-examination that he has never sent rent in favour of the plaintiff; rather admitted that he is not aware of how many owners are of the suit shop, though he filed Regular Civil Suit No.559 of 2008 against all three owners of the suit shop.

8.14 The Appellate Court has correctly appreciated the fact that the pleadings of the defendant cannot take the place of evidence, and in absence of proof of the deposit of arrears of rent by the defendant, as a consequence to follow, the defendant found to be in arrears of rent and accordingly, the Appellate Court has passed a decree of eviction which may not be disturbed by this Court.

8.15 To buttress his arguments, Mr. Maulik R. Shah, learned advocate would rely upon the decision of this Court rendered in ***CRA Nos.311 & 312 of 2026 on 25.06.2026.***

8.16 By making the above submissions, Mr. Maulik Shah, learned advocate for the respondent would request this Court to dismiss the present revision application.

9. No other and further submissions are being made by the learned advocates for the respective parties.

### **ANALYSIS AND REASONS:-**

10. At the outset, I would like to refer to and rely upon the decision of the Constitution Bench of the Honourable Apex Court in the case of ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh - (2014) 9 SCC 78***, where it scanned different Rent Control Acts of different States of India and, after revisited the law on the scope and ambit of the revisional jurisdiction of the High Court in the rent revision, it observed and held thus:

*“28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the “appellate jurisdiction” and “revisional jurisdiction” is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words,*

*revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.*

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**43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below.** *The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. **A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper.*** The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. *However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power*

*of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”*

*(Emphasis supplied)*

11. This revision application is filed by the legal heirs of the original defendant - tenant against the decree of eviction passed by the Appellate Court on the ground of subletting and arrears of rent. The Trial Court has dismissed the suit, whereas the Appellate Court has allowed the appeal. Thus, the present revision application is against the incongruous findings recorded by the Courts below on the aforesaid issues.

12. Having heard learned advocates for the respective parties and upon perusal of the impugned judgment and decree passed by the Appellate Court, and also upon perusal of the judgment passed by the Trial Court, it appears that as per the case of the plaintiff-landlord, the suit shop was rented in favour of the defendant on 06.07.1979 for a monthly rent of Rs.50/-, and the rent note was executed by his predecessor-in-title with the defendant, which was produced at Exhibit-42. As per the conditions of the rent note, the defendant was not permitted to sublet the suit shop.

12.1 The plaintiff having found that the defendant-tenant has parted with the possession of the suit shop in favour of his brother, Bharatbhai, and also that the defendant was in arrears of rent from 01.09.2006 to 30.11.2008, amounting to Rs. 1,400/-, sent a statutory notice on 14.11.2008 at Exhibit-

46 to the defendant. The defendant appears to have replied to the notice on 22.11.2008 at Exhibit-43, wherein it was disclosed that so far as the arrears of rent are concerned, he had already deposited Rs.1,300/- with the Court in Regular Civil Suit No.559 of 2008 filed by him against the plaintiff, and also disclosed that the money orders of Rs.800/- and Rs.1200/- sent by him were refused by the plaintiff. It is also contended that the defendant has damaged the property by making a permanent construction, and in the written statement, he has refuted the allegations so far as the arrears of rent and permanent construction are concerned.

12.2 Accordingly, upon the aforesaid facts and circumstances, Regular Civil Suit No. 596 of 2008 was instituted by the plaintiff seeking eviction of the defendant from the suit shop. After hearing the parties and appreciating the evidence on record, the Trial Court dismissed the suit, whereas the Appellate Court allowed the appeal as aforesaid.

13. Since there are two issues germane to the revision application, i.e., subletting and arrears of rent, upon which the decree of eviction was passed by the Appellate Court, I would like to deal with both these issues as follows: -

### **Subletting**

14. Mr. Mehul Shah, learned Senior Counsel, has strenuously submitted that the plaintiff has miserably failed to prove on record that the defendant has parted with the exclusive possession of the suit shop in favour of his brother,

namely, Bharatbhai, whereas, Mr. Maulik Shah, learned advocate for the landlord, has vehemently opposed such submission, contending *inter alia* that the plaintiff has successfully proved that Bharatbhai is in exclusive possession of the suit shop. There is no cavil that initial burden is always upon the landlord to prove that sub-tenant is in exclusive possession of rented premises, thereby it can be established that tenant has sublet rented premises.

15. To appreciate the submissions made by the respective learned advocates in the limited jurisdiction of revision, I have gone through the oral and documentary evidence led by the respective parties, which were made available to this Court in the form of a paper-book submitted by the petitioners.

15.1 The plaintiff has examined himself and also examined two witnesses, namely Sunil Hirjibhai Rathod (Exhibit-69) and Saifuddin Mahmadali Parekh (Exhibit-76). The first witness appears to be neighbour shopkeeper and second one is known to both sides due to business relation.

15.2 Having gone through this evidence, including their cross-examinations, it appears that both these witnesses have confirmed in their respective evidence that Bharatbhai is in exclusive possession of suit shop and only using the suit shop for his business. It is specially deposed that the defendant is not using the suit shop for his business. So far as the witness examined at Exhibit-76 is concerned, he has admitted that he is known to both parties, as both parties are his clients because he is doing business of printing. Nothing adverse



comes out from their cross-examination. According to me, in view of said evidence, the plaintiff has established on record that Bharatbhai is using the suit shop and is in exclusive possession of the suit shop.

16. It is true that as per the settled position of law and as per the decision in the case of ***S.F.Engineer (supra)*** cited by Mr. **Mehul S. Shah**, learned Senior Counsel, the initial burden is upon the landlord to prove that the tenant has sublet the premises in favour of a third party who is in exclusive possession and the same is for monetary consideration. Unless such a fact is proved by the landlord, he is not entitled to get a decree of eviction on the ground of subletting. The law on this issue is well-settled.

16.1 Yet, it is also a settled position of law that once the landlord proved on record that the sub-tenant is in exclusive possession of the suit premises, the onus would shift on the shoulder of the tenant to prove that the sub-tenant is not in exclusive possession and that, for a particular reason, the third party is occupying the suit premises.

16.2 Though several decisions were cited by Mr. Mehul S. Shah, learned Senior Counsel, in support of his submissions, I would like to refer to and rely upon the recent past judgment of the Hon'ble Apex Court in the case of ***Sri. M.V. Ramachandrasa Since Decd. Through Lrs. Vs. Mahendra Watch Company, reprensented by its Partners & Ors*** reported in **2026 SCC Online SC 582**, wherein after

considering the previous decision of the Hon'ble Apex Court, it held thus:

*“Issue No. 2*

***13. Whether the burden of proving unlawful sub-letting lies upon the landlord, and if so, whether such burden has been duly discharged in the present case?***

*13.1. It is a settled principle of law that the burden of proof lies upon the party asserting a fact. In eviction proceedings founded on the ground of sub-letting, the initial onus rests upon the landlord to establish that the tenant has parted with possession of the tenanted premises in favour of a third party without authority.*

*13.2. The jurisprudence on this issue is well crystallized. In Associated Hotels of India Ltd v. S.B. Sardar Ranjit Singh (supra), this Court held that the landlord must first prove parting with possession. However, recognizing the inherently clandestine nature of sub-letting arrangements, courts have evolved a rule of evidence that once exclusive possession of a third party is established, the burden shifts to the tenant to explain the nature of such possession.*

*13.3. This principle has been consistently reaffirmed in Joginder Singh Sodhi v. Amar Kaur<sup>18</sup>, and further authoritatively expounded by a three Judge Bench in Mahendra Saree Emporium (II) v. G.V. Srinivasa Murthy (supra), wherein it was held that once a prima facie case of exclusive possession by a stranger is made out, a presumption of sub-letting arises, thereby shifting the onus onto the tenant.*

*13.4. In Ram Murti Devi v. Pushpa Devi<sup>19</sup>, after considering the earlier precedents, the Court reiterated that direct evidence of sub-letting is seldom available, and the same can be inferred from surrounding circumstances, particularly where exclusive possession of a third party is established. The relevant paragraphs are extracted below for better appreciation:*

***“17..... This Court held in the above case that **transaction of sub-letting in their very nature are clandestine*****

*arrangements between tenant and sub-tenant and there cannot be any direct evidence and even it is a matter of legitimate inference. It was further held that burden of proof of establishing fact although lies on the landlord but it may shift according to the weight of evidence adduced by the party during the trial.*

*18. In Kala v. Madho Parshad Vaidya<sup>20</sup>, again the Court held that the onus of proof is on the landlord and if he establishes the parting of with the possession in favour of third party, the onus would shift to the tenant to explain. In para 16 following has been explained: (SCC p. 577)*

*“16. ... The onus to prove sub-letting is on the landlord and if he establishes parting of with the possession in favour of a third party, the onus would shift to the tenant to explain. In the instant case, however, the landlord did not discharge the initial onus and although it was not required, yet, the tenant explained how Appellant 2 had the permissive possession of the shop as its Manager.”*

*19. This Court in Joginder Singh Sodhi v. Amar Kaur, had occasion to consider various aspects of sub-letting. After noticing the various earlier judgments of this Court, this Court reiterated the law in para 13 to para 17, which are to the following effect: (SCC pp. 36-37)*

*“13. Regarding sub-letting, in our opinion, the law is well settled. It is observed in the leading case of Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh that in a suit by the landlord for eviction of tenant on the ground of sub-letting, the landlord has to prove by leading evidence that (i) a third party was found to be in exclusive possession of the*

***rented property, and (ii) parting of possession thereof was for monetary consideration.***

14. The above principle was reiterated by this Court from time to time. In *Shama Prashant Raje v. Ganpatrao*[21](#), the Court stated that on sub-letting, there is no dispute with the proposition that the two ingredients, namely, parting with possession and monetary consideration therefore have to be established.

.....

16. The contention of the learned counsel for the appellant, however, is that even if it is assumed that one of the ingredients of sub-letting was established, the second ingredient, namely, parting of possession with “monetary consideration” was not established. The counsel urged that there is no evidence on record that any amount was paid either in cash or in kind by Respondent 2 to Respondent 1. In the absence of such evidence sub-tenancy cannot be said to be established and the landlady was not entitled to get an order of eviction against the tenant.

17. We are unable to appreciate the contention. As observed by this Court in *Bharat Sales Ltd. v. LIC*[22](#), sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. ***In this process, the landlord is kept out of the scene. Rather, the scene is enacted***

*behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. **Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.***

*(emphasis in original)*

20. A three-Judge Bench in *Mahendra Saree Emporium (2)* v. *G.V. Srinivasa Murthy*, had occasion to consider the

*question of sub-letting (sub-tenancy) and question of burden of proof. In para 16, the Court had elaborated the concept of sub-letting and laid down the following: (SCC pp. 490-91)*

***“16. ....The onus to prove sub-letting is on the landlord. If the landlord prima facie shows that the occupant, who was in exclusive possession of the premises, let out for valuable consideration, it would then be for the tenant to rebut the evidence.”***

*Thus, in the case of sub-letting, the onus lying on the landlord would stand discharged by adducing prima facie proof of the fact that the alleged sub-tenant was in exclusive possession of the premises or, to borrow the language of Section 105 of the Transfer of Property Act, was holding right to enjoy such property. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.”*

***21. From the pronouncements of this Court as noticed above, following statement of law can be culled out:***

***21.1. In a suit by the landlord for eviction of the tenant on the ground of sub-letting the landlord has to prove by leading evidence that:***

***(a) A third party was found to be in exclusive possession of the whole or part of rented property.***

***(b) Parting of possession thereof was for monetary consideration.***

***21.2. The onus to prove sub-letting is on the landlord and if he has established parting of possession in favour of a third party either wholly or partly, the onus would shift to the tenant to explain.***

*21.3. In the event, possession of the tenant wholly or partly is proved and the particulars and the instances of the transactions are found acceptable, in particular facts and circumstances of the case, it is not impermissible for the court to draw an inference that the transaction was entered with monetary consideration. It may not be possible always to give direct evidence of monetary consideration since such transaction of sub-letting are made between the tenant and sub-tenant behind the back of the landlord.*

*22. In each case, the proof of sub-letting/sub-tenancy thus, has to be established on the parameters of law, as laid down in the above cases. Whether, in particular facts and circumstances the landlord has successfully discharged the burden of proving sub-tenancy depends on pleading and evidence in each case.”*

**13.5. Thus, the legal position that emerges is that the landlord discharges the initial burden by establishing (i) exclusive possession of a third party, and (ii) absence of the original tenant from possession. Upon such proof, a presumption of sub-letting arises, and the onus shifts to the tenant to demonstrate that such possession is lawful and not in the nature of sub-tenancy.”**

*(Emphasis Supplied)*

16.3 Having taken note of exposition of law supra, there is no scintilla of doubt that once the initial burden is discharged by the landlord, vis-a-vis the exclusive possession of the third party and absence of the original tenant from possession, a presumption of subletting arises, and the onus shifts on the tenant to demonstrate that such possession is lawful and not in the nature of subtenancy.

17. So far as the case at hand is concerned, the defendant in his oral evidence did not discharge such onus and failed to demonstrate that the possession of the suit shop by his brother named Bharatbhai is lawful and not in the nature of subtenancy; rather, he has deposed that he is doing business from the suit shop.

17.1 According to my view, it was incumbent upon the tenant to explain the possession of his brother (Bharatbhai) at the suit shop and the reason for his brother occupying the suit shop, inasmuch as from the plaintiff's evidence, it is discernible that Bharatbhai is exclusively occupying the suit shop. The defendant has failed to discharge his burden in this regard.

17.2 It is true that the defendant has tried to examine his witnesses to prove that he is still running his business from the suit shop. The witnesses examined by the defendant at Exhibits 108, 113 and 117 have categorically admitted in their cross-examination that they have not personally visited the suit shop and are not able to say that the defendant is running his business from the suit shop.

17.3 In the light of the aforesaid evidence led by the parties on the record, it cannot be said that the defendant is running his business from the suit shop. Mere production of the certificate under the Shops and Establishments Act, which was renewed from time to time since 1979 (Exhibit-109), and the old telephone connection continued in his name at suit shop would not itself prove the fact that he is having control



over the suit shop. The defendant has not even able to explain as to how he received the summons/notice of the suit at an address other than the suit shop, because the defendant's address given in the suit is not that of the suit shop, but of the shop from where he was actually running his business at that time.

18. Thus, considering the aforesaid facts and circumstances and the evidence on record, I am of the view that the Appellate Court has neither committed a jurisdictional error nor any gross error of law which requires to be corrected by this Court while exercising its revisional jurisdiction. Rather, after reappreciating the oral and documentary evidence on record, the Appellate Court in para-7.9 of its impugned judgment has categorically recorded a finding of fact that the suit shop is in the possession of Bharatbhai and that he is doing the business of selling watches, while the defendant is not doing business at the suit shop. Thus, the plaintiff has clearly proved that the suit shop is sublet. This finding of fact cannot be disturbed by this Court, as it is neither perverse nor grossly erroneous, which is a *sine qua non* for interference in the revision.

19. So far as the decisions cited supra by Mr. Mehul S. Shah, learned Senior counsel, are concerned, so far as the proposition of law is concerned, there is no dispute, but as per the facts and circumstances of each case, the Hon'ble Apex Court in those decisions decided the *lis* before it. All such decisions are distinguishable vis-a-vis the facts at hand, due to the following reasons:

I. In the case of **Resham Singh (supra)**, it is evident from the facts recorded that the original tenant was involved in some criminal proceedings and he was absconding for a considerable period and in such a factual background, he allowed his brother, who looked after the shop in his absence. In this set of facts, the Hon'ble Apex Court has not believed that the tenant had sublet the suit shop; Such is not the case at hand.

II. In **Dev Kumar (Died) Through LRS. (supra)**, it appears that the case of the landlord was believed by the Rent Court, qua issue of subletting is concerned, by placing reliance upon the evidence of the Local Commissioner who appears to have been paid by the landlady through her power of attorney; and considering his conduct, such evidence was disbelieved, and in absence of any other evidence on record, it was held that the landlady failed to prove that the tenant has parted with the exclusive possession of the rented premises to a third party. Again, the same is not the case here. The plaintiff-landlord in the case at hand has examined two independent witnesses and the defendant has miserably failed to prove their testimony wrong in any manner.

19.1 At this stage, it would be apposite to refer to and rely upon the decision of the Hon'ble Apex Court in the case of **Bhairab Chandra Nandan V. Ranadhir Chandra Dutta** reported in (1988) 1 SCC 383, which in fact referred by the Hon'ble Apex Court in the case of **SF Engineer (supra)**,

wherein the facts were more or less similar to the case at hand, and the Hon'ble Apex Court observed thus:

*“5. Now coming to the question of sub-letting, once again we find that the courts below had adequate material to conclude that the respondent had sub-let the premises, albeit to his own brother and quit the place and the sub-letting was without the consent of the appellant. Admittedly, the respondent was living elsewhere and it is his brother Manadhir who was in occupation of the rooms taken on lease by the respondent. The High Court has taken the view that because Manadhir is the brother of the respondent, he will only be a licensee and not a sub-tenant. There is absolutely no warrant for this reasoning. It is not as if the respondent is still occupying the rooms and he has permitted his brother also to reside with him in the rooms. On the contrary, the respondent has permanently shifted his residence to another place and left the rooms completely to his brother for his occupation without obtaining the consent of the appellant. There is therefore no question of the respondent's brother being only a licensee and not a sub-tenant. Hence it follows that the High Court was not justified in setting aside the concurrent findings of the courts below on the ground of sub-letting also.”*

*(Emphasis supplied)*

20. Having examined the aforesaid facts and evidence on record, and in view of the afore mentioned law stands as on date, I am unable to agree with the submissions made by Mr. Shah, learned Senior Counsel, that the Appellate Court has committed any jurisdictional error and its finding of fact

recorded on the issue of subletting is either perverse, grossly erroneous, or contrary to the settled position of law.

21. Accordingly, I am of the view that there is no error of law committed by the Appellate Court in deciding the issue of subletting.

### **Arrears of Rent**

22. As per the case of the plaintiff, the defendant did not pay rent from 01.09.2006 to 30.11.2008 and the tenant was in arrears for about 28 months. Since the monthly rent was fixed at Rs.50/- per month, vide statutory notice (Exhibit-46) dated 14.11.2008 was issued by the plaintiff to the defendant, whereby he was called upon to pay arrears of rent, i.e., Rs 1,400/- and the tenancy was also terminated. The defendant appears to have replied to the statutory notice through his lawyer on 22.11.2008 (Exhibit 43). It is replied by the defendant that he has deposited Rs.1,300/- in Regular Civil Suit No.559 of 2008 filed against the plaintiff and other co-owners. It is also stated that he sent two money orders of Rs.800/- and Rs.1,200/- to the plaintiff, but the same were refused. Thus, according to the defendant, he was not in arrears of rent. The defendant in para-11 of his written statement also narrated the aforesaid facts and stated that on 17.11.2008, i.e., after three days of the statutory notice, he deposited Rs.1,300/- with the Court in the aforesaid suit, and according to the defendant, it is within the knowledge of the plaintiff.

23. Mr. Shah, learned Senior Counsel, has drawn my attention that the copy of the judgment delivered by the Rent Court in the aforesaid suit, i.e., Regular Civil Suit No. 559 of 2008, which was submitted on record of the suit in question at Exhibit-102, and it is borne out from the judgment of the aforesaid suit that the defendant has cleared the arrears of rent.

23.1 Mr. Shah, learned Senior Counsel, has emphasized that once the evidence on record is available to show that rent has been paid by the tenant, merely because the actual receipt of deposit of rent, for any reason, is not produced on record, it would not mean that the tenant has either not paid or neglected to make payment of rent.

23.2 Mr. Shah, learned Senior Counsel, has also invited my attention to the cross-examination of the plaintiff, whereby he would submit that the plaintiff has not denied the factum of deposit of rent in the court in the aforesaid suit.

24. Whereas Mr. Maulik Shah, learned Advocate, has vehemently submitted that the defendant has failed to prove on record that he has paid the rent to the plaintiff and cleared the arrears of rent within 30 days from the date of receipt of the statutory notice. Mr. Shah, learned Advocate, has invited my attention to the reasons assigned by the Trial Court on the issue of arrears of rent, whereby he would contend that the Trial Court has presumed that the tenant has deposited the rent as demanded. Mr. Shah, learned Advocate, has also invited my attention to the cross-examination of the

defendant, wherein he has categorically admitted that he has never sent rent to the plaintiff and, in fact, he does not know how many owners are of the suit shop, even though he filed the aforesaid suit being RCS No. 559 of 2008 against all the owners including the plaintiff.

25. There is no dispute between the parties that the statutory notice was served upon the tenant and the same was received by the defendant. It is the specific case of the defendant that he has deposited a sum of Rs.1,300/- in the aforesaid suit, but there is nothing on record to show that he has deposited such amount in the aforesaid suit. Undisputably, the defendant did not submit receipt of the deposit of the aforesaid amount to prove that he was not in arrears of rent. Thus, except the pleading, there is nothing on record and in fact for the following reasons, the defendant has failed to prove that he has cleared arrears of rent in time.

26. Upon perusal of the findings of fact recorded by the Trial Court and so also the Appellate Court on the issue of arrears of rent, it appears that the Trial Court has in fact presumed that the tenant has deposited the rent despite observing that there is no documentary evidence to show that either money orders have been sent by the defendant to the plaintiff or that the defendant deposited Rs.1,300/- as arrears of rent in RCS No. 559 of 2008.

26.1 It is so observed by the Trial Court in paragraph-31 of its judgment that in the aforesaid suit, the issue of arrears of rent at the instance of the defendant was not under consideration

before the court. In such circumstances, there was no reason for the defendant to deposit the rent in the court in the aforesaid suit wherein he was the plaintiff, that too, without getting an acknowledgment in this regard from the plaintiff. Rather, in paragraph-33 of its impugned judgment, the Trial Court has recorded a finding that the plaintiff has not seriously disputed the deposit of arrears of rent by the defendant in the aforesaid suit, and accordingly it is believed that the defendant has deposited the arrears of rent, subsequent to the statutory notice, within 30 days from the date of receipt of the statutory notice. All throughout, the landlord has disputed that tenant was in arrears of rent at the time of institution of suit.

27. So far as the sending of money orders is concerned, it has been admitted by the defendant in his cross-examination that he has not paid rent to the plaintiff and, in fact, is not aware that how many owners are of the suit shop.

27.1 As far as the judgment delivered by the Rent Court in RCS No. 559 of 2008 is concerned (Exhibit-102), it is true that there is a reference to a money order of Rs.1,200/- by way of three documents produced at Exhibit 35 to 37, as recorded in para 5 of the judgment of the aforesaid suit. Again, this piece of evidence also does not come to the rescue of the tenant to show that he cleared the arrears of rent within 30 days from the date of receipt of the statutory notice, inasmuch as the documents produced at Exhibits-35 to 37 supra would not indicate that such tender of rent was to the plaintiff or to any other persons, including co-owners.

27.2 Furthermore, the money order appears to have been sent for rent for a period between September 2006 and December 2007, and the amount of the money order appears to be Rs.1,200/- (Exhibit 35 to 37). Even if this can be considered by this court as a payment of rent, still the tenant was in arrears of rent from January 2008 until November 2008, i.e., more than six months. The cross-examination of the plaintiff would not remotely suggest that he has admitted the factum of deposit of rent by the defendant in the aforesaid suit and /or it was in his knowledge. The plaintiff has never given up his stand that the defendant was in arrears of rent.

28. There is no dispute between the parties that the case at hand is governed by Section 12(3)(a) of the Rent Act. No dispute of the standard rent raised by the tenant within one month from date of receipt of the statutory notice. As per the settled position of law, in a case where the tenant fails to pay or clear the arrears of rent for more than six months within one month from the date of receipt of the statutory notice under Section 12 of the Act, and tenant does not raise a dispute as to standard rent within that time, and rent is payable month by month, in such circumstances, rent court cannot save the tenant from eviction.

28.1 At this stage, it would be apposite to refer to and rely upon the decision of the Hon'ble Apex Court in the case of ***Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani & Ors.*** reported in ***(1989) 4 SCC 612***, wherein the Hon'ble Apex Court held thus:-



“6. It has been urged by the learned counsel for the tenants that 14-11-1967 was the first day of hearing of the suit and since in pursuance of an order passed by the trial court on that day, the tenants had deposited the entire arrears of rent on 9-1-1968 within the time granted by the court and continued to deposit the monthly rent, thereafter they could not be treated as defaulters in payment of rent even if the amendment made in sub-section (3) of Section 12 by the Amendment Act 18 of 1987 was ignored. We, however, find it difficult to agree with this submission. It is not denied that the arrears of rent which were for a period of more than six months and in respect of which a notice of demand had been served on the tenants under sub-section (2) of Section 12 of the Act had not been paid by the tenants to the landlord within one month of the service of the notice. It is also not denied that during the said period of one month, no dispute regarding the amount of standard rent or permitted increases was raised by the tenants. On a plain reading of clause (a) of sub-section (3) of Section 12 of the Act as it stood at the relevant time, the said clause was clearly attracted and the consequence provided therein had to follow namely a decree for eviction against the tenants had to be passed. Clause (b) of sub-section (3) on the face of it was not attracted inasmuch as the said clause applied only to a case not covered by clause (a). This is amply borne out by the use of the opening words “In any other case” of clause (b). In Harbanslal Jagmohandas v. Prabhudas Shivlal [(1977) 1 SCC 575] these clauses (a) and (b) of sub-section (3) of Section 12 of the Act came up for consideration and it was held that the tenant can claim protection from the operation of Section 12(3)(a) of the Act only if he makes an application raising a dispute as to standard rent within one month of the service of

*the notice terminating the tenancy. In the instant case this had not admittedly been done by the tenants. The consequence of non-payment of arrears of rent claimed in the notice of demand was, therefore, inevitable.* In *Jaywant S. Kulkarni v. Minochar Dosabhai Shroff* [(1988) 4 SCC 108] clauses (a) and (b) of sub-section (3) of Section 12 again came up for consideration. It was held: (SCC p. 112, para 3)

*“Sub-section (3)(a) of Section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession. In the instant case, as has been found by the court, the rent is payable month by month. There is no dispute regarding the amount of standard rent or permitted increases. Such rent or increases are in arrears for a period of six months or more. The tenant had neglected to make payment until the expiration of the period of one month after notice referred to in sub-section (2). The court was bound to pass a decree for eviction in any such suit for recovery of possession.”*

*(Emphasis supplied)*

29. According to my view, the Appellate Court has correctly examined the issue as regards arrears of rent by observing that the Trial Court has decided such issue only on the basis of pleadings, though there is no proof on record to prove such issue. The Appellate Court has re-appreciated the evidence, having power as a last fact-finding court, and ultimately

arrived at a conclusion that the defendant has failed to prove on record that he has paid or deposited the rent within one month from the date of the receipt of the statutory notice. It is settled law that there is a distinction between pleading and proof. The pleadings are not substitute of proof. **[See - RBI v. S. Mani, (2005) 5 SCC 100 (para-11) ]**.

30. Thus, in view of the aforesaid peculiar facts and circumstances of the case and taking note of the aforesaid decision, I am of the considered view that the defendant has failed to prove that he has paid the rent upon receipt of the statutory notice and that he was not in arrears of rent at the time of institution of the suit. Once such would be the conclusion, a fortiori, decree of eviction is required to be passed by the court as per Section 12(3)(a) of the Rent Act. According to my view, the Appellate Court has correctly decided the issue of arrears of rent and, as such, I am unable to find any perversity or jurisdictional error and/or any gross error of law qua such finding of fact recorded by the Appellate Court.

### **CONCLUSION:-**

31. Thus, in view of the aforesaid discussion and for the forgoing reasons, I am of the considered view that the Appellate Court has not committed any patent illegality or perversity while recording the findings of fact and as such, I am in complete agreement with the reasons assigned by the Appellate Court, whereby it has passed the decree of eviction in favour of the landlord.

32. In the absence of any miscarriage of justice and or no perversity found in the findings of fact recorded by the Appellate Court while decreeing the suit in favour of the landlord, the present revision application is found devoid of any merit and it is required to be dismissed.

33. In view of the foregoing conclusion, this revision application is dismissed. Rule is discharged. There shall be no order as to costs.

Lalji Desai

*Sd/-*  
**(MAULIK J.SHELAT,J)**