

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4914 of 2023****With****R/FIRST APPEAL NO. 4917 of 2023****With****R/FIRST APPEAL NO. 4918 of 2023**=====
ATUL PRABHULAL SHAH**Versus****PRIYADARSHANBHAI BHIMBHAI MEHTA**
=====**Appearance:**

JAIMIN A GANDHI(8065) for the Appellant(s) No. 1

MR PA JADEJA(3726) for the Appellant(s) No. 1

MS.DILBUR CONTRACTOR(6388) for the Defendant(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE**Date : 09/05/2025****ORAL ORDER**

1. Heard Mr. Jaimin Gandhi, learned advocate for the appellant. At the outset, learned advocate has invited attention of this Court to the order dated 1.2.2024 passed by the Coordinate Bench, whereby, responsible officer of the Corporation was directed to remain present with all the details of the allotment of the property. Noticing the fact that specific case has been pleaded by the original plaintiff to the effect that tenants have surrendered their tenancy rights and alternative property has been provided by the Corporation under the scheme as the shops being demolished for expansion of the road. Learned advocate has assailed the impugned order of trial court by contending that in fact the appellants have been provided alternative accommodation only to the extent of the demolished part of the shop and they still continued to be the tenant of the remaining portion of the

suit property. Hence, according to them, there is no termination of their tenancy rights with regard to undemolished part of the suit property. In such circumstances, the trial Court committed serious error in exercising its jurisdiction as the suit at the most could have been tried before the Small Cause Court under the Rent Act. He has therefore, urged this Court to admit the present appeals and to stay the impugned order being passed without jurisdiction.

2. Learned advocate Ms. Contractor for the respondent - original plaintiff has submitted that in fact despite sufficient opportunities being granted to the present appellants, they have chosen not to contest the suit as they failed to appear before the trial Court and led evidence. The suit was, therefore conducted ex-parte. She has further pointed out that in fact First Appeals have been preferred only when the execution proceedings were preferred by the present respondent- original plaintiff. The attention of this Court was invited to the issues framed and has submitted that the trial Court on appreciation of the evidence has rightly passed the impugned order directing the original defendants to vacate the suit premises.

3. In rejoinder, learned advocate for the appellant has placed heavy reliance upon the contents of the writ petition filed by the present respondent being Special Civil Application No.13774 of 2012 by highlighting the averments made in para 3.5 of the aforesaid petition wherein reading of the contents clearly goes to suggest that admittedly the present appellants

continued to be the tenants of the undemolished part of suit premises.

4. Considering the rival submissions made by the learned advocates for the respective parties, the issue of jurisdiction requires consideration. Hence, let notice be issued upon the respondent, making it returnable on 11.06.2025.

5. At this stage, learned advocate has pressed for stay against the execution proceedings and has urged to pass similar orders as passed today in the cognate appeals. Having considered the aforesaid prayer, it was noticed that no separate applications for stay has been filed in the captioned appeals, this Court is unable to entertain such prayer. However, noticing the fact that the appellants are facing execution proceedings, it would be open for the appellants to move before the vacation bench by preferring appropriate application for stay in this regard.

RATHOD KAUSHIKSINH

(NISHA M. THAKORE,J)