

À)

SLP(C)No. 6363 OF 2001  
ITEM No.36

Court No.10

SECTION IX  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.6363/2001

(From the judgement and order dated 26/07/2000 in CRA 1305/86  
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

SHAH JETHALAL PRABHUDAS (D) BY LR.

Petitioner (s)

VERSUS

DARJI AMARSHI LALJI(DEAD)THR. LRS.

Respondent (s)

( With Appln(s). for exemption from filing O.T. )  
( With prayer for interim relief)

Date : 23/02/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Petitioner (s)Mr. Huzefa Ahmadi, Adv.  
Mr. Nakul Dewan, Adv.  
Mr. Abhijat P. Medh,Adv.

For Respondent (s)  
Mrs K.Sharda Devi,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

Heard the parties.

The appeal is allowed in terms of the signed order placed on the file. The impugned judgment of the High Court is set aside and that of the Trial Court and First Appellate Court are restored.

In the facts and circumstances of the case, the respondents are allowed time till 31st January , 2005n to vacate the suit premises on filing usual undertaking within four weeks from today.

(Ajay Kr. Jain)  
(Kanwal Singh)

Court Master  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2004  
(Arising out of SLP(C) No. 6363 of 2001)

Late Shah Jethlal Prabhudas (Dead)  
by Legal Representative

....  
Appellant(s)

Versus

Darji Amarshi Lalji (Dead) Through Lrs. & Anr.

....  
Respondent(s)

O R D E R

Leave granted.

Heard the parties.

This appeal has been preferred by the plaintiff against judgment rendered by Gujarat High Court in a revision application filed under Section 29(2) of the Bombay Rent, Hotel & Lodging House Rates Control Act, 1947 (hereinafter referred to as The Act"). The appellant-plaintiff filed a suit for eviction of the two defendants from the suit premises and his case, inter alia, was that defendant No. 1 was his tenant and he had sub-let the suit premises to defendant No. 2. In the suit defendant No. 1 did not appear but only defendant No. 2 appeared and filed written statement contesting the claim for ejection alleging therein that defendant No. 1 was not tenant rather he was the tenant. On the pleadings of the parties various issues were framed and important issues were whether the defendant No. 1 was tenant or it was defendant No.2 who was inducted as a tenant. The other important issue was as to whether defendant No. 2 had alternative accommodation or not. These issues were tried alongwith other issues and the Trial Court held that defendant No. 2 was a tenant and he had an alternative accommodation. On these findings the Trial Court granted decree for eviction against both the defendants. Defendant No. 1 did not prefer any appeal, as such decree for eviction passed against him attained finality. When the matter was taken in appeal by defendant No. 2, the Appellate Court confirmed the decision of the Trial Court. Thereafter, defendant No. 2 alone preferred a revision petition under Section 29(2) of the Act before the Gujarat High Court which after re-appraisal of the evidence has allowed the same, set aside the orders passed by the Trial Court as well as the Appellate Court and dismissed the petition for eviction. Hence this appeal by special leave. Learned counsel for the appellants submitted that under Section 29(2) of the Act which confers power of revision on the High Court, it was not permissible for the Court to re-appraise the evidence and the revision application could have been disposed of only on the question of law. In support of his submission, he has relied upon a decision of this Court in the case of Patel Valmik Himat Lal & Ors. Vs. Patel Mohal Lal Mulji Bhai (Dead) Thru. Lrs. (1998) 7 SCC, 383 in which it has been categorically laid down that under Section 29(2) of the Act High Court is empowered to correct only those errors which may make the decision contrary to law and it has no jurisdiction to re-appreciate the evidence. In our view the present case is squarely covered by the aforesaid decision of this Court as although there was no question of law before the High Court in the revision application, it had allowed the same after re-appreciating the evidence which was not permissible under law. Accordingly, the appeal is allowed, the impugned order passed by the High Court is set aside and orders passed by the Trial Court and the First Appellate Court are restored. In the facts and circumstances of the case, we grant the respondents time till 31st January, 2005 to vacate the suit premises on filing usual undertaking within four weeks.

.....J.  
(B.N. AGRAWAL)

.....J.  
(Dr. AR. LAKSHMANAN)

New Delhi  
February 23, 2004