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Reserved On : 17/12/2025
Pronounced On : 05/01/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 221 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
	Yes	

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VAIKUNTHRAI RAMNIKRAI VASAVDA SINCE DECD. THRO HIS HEIRS & ORS.
Versus
KASTURBEN DAYALAL PANDYA (DECD. THRO'LEAGAL HEIRS) & ORS.

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Appearance:
MR VISHAL C MEHTA(6152) for the Applicant(s) No. 1.2,1.3,1.4,1.5
MR HARICHANDRA K BAROT(10835) for the Opponent(s) No. 1.1,1.2,1.3.1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. This Revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act (for short "**the Rent Act**") stem from common judgment and decree delivered on 29.03.2004 in Regular Civil Appeal No.27 of 2003 with Cross Objection, both of which came to be dismissed, in turn confirming judgment and decree passed in Regular Civil Suit No.262 of 1995 dated 06.02.2003.

2. The appellant is defendant – original tenant and

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respondent is original plaintiff – landlord. For convenience and brevity, they are referred as “landlord” and “tenant”.

3. Landlord purchased residential premises situated in Hethan Faliya area of Junagadh district by way of registered sale deed on 11.05.1995 with right to recover arrears of rent commencing from 01.05.1989 along with local and municipal tax, water tax, education tax etc. In said residential premises, ground floor, consisting of two room adjacent open space, court yard, kitchen, wash room was rented to the tenant at monthly rent of Rs.100/- (in short **‘rented premises’**). On 30.04.1993, previous owner of rented premises issued notice to the tenant which was served, despite that, tenant has not paid arrears of rent to the landlord which was due from 01.05.1989 and also did not pay local tax, water tax and other tax etc.

4. Notice under section 12(2) of the Rent Act was sent by landlord to tenant demanding arrears of rent due from 01.05.1989 and also local and municipal tax, water tax, education tax etc. This notice was issued on 22.07.1995 by registered post, which was served to the tenant on 27.07.1995. According to landlord, even after one month of receiving

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statutory notice, tenant has not paid rent due thereunder. There was arrears of rent for more than six months, therefore, tenant is liable to be evicted from rented premises under section 12(3)(a) of the Rent Act. In addition to ground of arrears of rent, plaintiff – landlord pleaded other grounds available under section 13 of the Rent Act viz. personal and bona fide requirement, causing annoyances, nuisance etc. with claim that landlord shall suffer higher comparative hardship, if no eviction decree is passed.

5. Tenant replying the statutory notice, within one month from the date of receipt of notice raised contention that contractual rent of Rs.100/- claimed by the landlord is exorbitant, excessive and not standard rent (Exh.16). Raising dispute that contractual rent being not standard rent, tenant preferred Civil Misc. Application No.555 of 1995 under section 11 of the Rent Act to decide Standard rent. By order dated 21.02.1996, learned Civil Judge, (JD), Junagadh passed order by fixing interim standard rent at Rs.94/- per month and directed tenant to pay arrears of rent and to pay standard rent regularly as and when it becomes due.

6. On aforesaid background, learned Trial Court after fixing multiple issues has been pleased to believe that case pleaded by

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landlord falls under section 12(3)(b) of the Rent Act. Further, since the tenant fell short of paying standard rent on the first date of hearing i.e. on the date of framing issues, he is liable to be evicted. Accordingly, learned Trial Court passed judgment and decree in favour of the landlord on the ground of arrears of rent and directed tenant to hand over peaceful and vacant possession of rented premises within three months from the date of judgment and decree and further directed tenant to pay Rs.7018/- and fixed standard rent at Rs.100/- per month. Learned Trial Court has denied eviction of the tenant on the other grounds pleaded by landlord.

7. Being aggrieved and dissatisfied with judgment and decree passed by learned Trial Court, tenant preferred Regular civil Appeal No.27 of 2003 before the learned Joint District Judge / 5th Fast Track Court, Junagadh.

8. Having received notice in first appeal, landlord being aggrieved and dissatisfied in respect of issue nos.1,2,3,4A,4 and 6 of judgment passed by learned Trial Court, filed Cross Objection under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (for short **'the Code"**) at Exh.14 in appeal proceedings.

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9. After comprehensive and meticulous analysis of factual aspects in context to provision of Rent Act, learned Appellate Court being last Court of fact was pleased to dismiss Regular Civil Appeal filed by the tenant as well as Cross Objection filed by landlord and confirmed the judgment and decree passed by learned Trial Court.

10. Landlord has accepted findings drawn by learned Appellate Court in Cross Objection.

11. Being further aggrieved by judgment and decree of learned Appellate Court, tenant has filed this Revision Application *inter-alia* on the grounds stated in the Revision Memo.

12. Heard learned advocate Mr.Vishal Mehta for the applicants – tenant and learned advocate Mr.Barot for respondents – landlord.

13. Learned advocate Mr.Vishal Mehta appearing for revisionist after taking this Court to the facts of the case, referring to judgment of this Court in the case of **R.N.Suthar v/s. C.D.Patel [2002 (1) GLR 109]** as well as judgment of Hon'ble Apex Court in the case of **Vora Abbasbhai Alimahomed v/s. Haji Gulamnabi Haji Safibhai [AIR 1964 SC 1341]** submitted that

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learned Trial Court as well as learned Appellate Court have gravely erred in understanding provision of section 12(3)(b) read with section 11 of the Rent Act. He would submit that as per section 12(3)(b) of the Rent Act to seek protection, the tenant is required to pay or deposit arrears of standard rent before first date of hearing. He would submit that in the case on hand, tenant had preferred application under section 11 of the Rent Act to fix standard rent. He would submit that learned Court below has fixed interim standard rent at Rs.94/- per month. It is further submitted that admittedly, interim standard rent cannot be equated with standard rent, both are different and distinct; as interim standard rent can be varied or modified. It is submitted that it was obligatory upon the learned Court below to decide application under section 11 of the Rent Act to fix standard rent before first date of hearing in the suit i.e. fixing issues. He would further submit that had the learned Court below fixed standard rent under section 11 of Rent Act before fixing issues in the suit, the tenant would be in position to know that what standard rent he is required to deposit before first date of hearing. It is further submitted that in the present case, admittedly, learned Court below has not fixed standard rent before fixing issues, thus the tenant fell short of paying standard rent on the date of fixing

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issues, hence, that would not lead eviction of tenant. He would submit that since tenant was not aware about standard rent, it cannot be said that tenant has not complied condition of section 12(3)(b) of the Rent Act and has not deposited standard rent on the first date of hearing. Learned advocate Mr.Mehta further submitted that word 'regularly' has been omitted from statute book which was appearing in section 12(3)(b) of the Rent Act. It is further submitted that in the case on hand, no sooner standard rent was fixed i.e. in final judgment of the suit, tenant has deposited entire standard rent. Learned advocate Mr. Mehta submits that tenant having came to know about standard rent, as was fixed in judgment of the suit, immediately, complied to deposit entire arrears of standard rent and continue to deposit during appeal and revision proceedings. Thus, tenant since has complied the provision of Rent Act has not lost protection under section 12(3)(b) of the Rent Act. It is further submitted that hence, learned Court below failed to understand interplay of section 12(3)(b) and section 11 of the Rent Act as fixing of interim standard rent does not equate fixing of standard rent and thereby committed serious error.

13.1. In aforesaid submissions, learned advocate Mr. Mehta

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would submit that learned Courts below have miserably failed to notice this issue and materially erred in passing decree of eviction.

13.2. By making above submissions, learned advocate Mr.Mehta submits to allow Revision Application and to quash and set aside judgment and decree delivered by learned Trial Court and confirmed by learned Appellate Court.

14. Per contra, learned advocate Mr.Barot for the respondents – landlord supports the judgment and decree delivered by learned Courts below in regards to arrears of rent as well as finding in regard that tenant fell short in paying standard rent on the first date of hearing. Hence, he submits that learned Courts below have not committed any error in passing eviction decree. Therefore, it is submitted to dismiss the Revision Application.

15. No other and further submissions are canvassed by either of side.

16. At the outset, let refer to issue framed by learned Trial Court at Exh.11 (it is in Gujarati, for better understanding, it is translated in English) :-

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"1. Whether the Plaintiff proves that the Defendant, without the consent and permission of the Plaintiff, has carried out demolition and constructed a permanent structure in the rented premises?

2. Whether the Plaintiff proves that the Defendant, in rented premises, behaves in such a manner that cause nuisance and annoyance?

3. Whether the Plaintiff proves that the Plaintiff has necessity of the rented premises for personal use?

4. Whether the Plaintiff proves that the Defendant has acquired suitable alternative with adequate facilities for residential purpose?

4A. Upon passing the order/decree to vacate the rented portion, to whom will the greater inconvenience be caused? Whether to the Defendant if the order/decree is passed, or to the Plaintiff if the order/decree is not passed?

5. Whether the Plaintiff proves that the Defendant has failed to pay the rent for a period exceeding six months?

6. What is the standard rent of the rented premise in this case?

7. Whether the notice issued by the Plaintiff is lawful and just?

8. How much dues of the Plaintiff are proved?

9. What order and decree?"

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17. Issue no.1 to 4, 4A were answered in negative, issue no.5 and 7 were answered in affirmative, issue no.6 was answered that standard rent is Rs.100/- per month, for issue no.8, learned Trial Court held that amount due is Rs.7081/- and passed impugned judgment and decree for eviction as well as recovery of due amount. Thus, what could be noticed that learned Trial Court did not believe existence of grounds pleaded under section 13 of the Rent Act but believed that landlord successfully proved ground of arrears of rent. Thus, passed impugned judgment. Discussion on issue no.5 by learned Trial Court indicates that learned Trial Court after thoroughly discussing the provisions of section 12(3)(a) and 12(3)(b) of the Rent Act went to decide that if tenant is seeking protection in regards to his tenancy on rented premises under section 12(3)(b), the tenant was required to pay or deposit entire arrears of standard rent on the first date of hearing i.e. on the date of framing of issues. It is further held by learned Trial Court that arrears of rent was from 01.04.1992. The Court has framed the issues on 21.07.1998 i.e. on the first date of hearing and the tenant has deposited Rs.4508/- towards arrears of standard rent, which fell short as against total outstanding amount of Rs.8400/- and therefore, tenant has lost

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protection under section 12(3)(b) of the Rent Act. Accordingly, learned Trial Court passed decree.

18. Learned Appellate Court after discussing legality and validity of statutory notice under section 12(2) of the Rent Act referred to section 12(1) of the Rent Act and also provisions under section 11(3) and (4) of the Rent Act and addressed argument that since the Court has not fixed standard rent, the tenant is not obliged to comply with condition under section 12(3)(b) i.e. entire arrears of rent to be deposited before first date of hearing, as tenant is not aware what would be standard rent. The learned Appellate Court veto this argument and confirmed eviction decree.

18.1. Finding of learned Appellate Court in para 20,20.1, 21.1, 21.2 and 21.3 are relevant, which reads as under :-

> *“20. It would be expedient to examine the provisions of the Section 12(3)(b) which reads as under:*
>
> > *"(b) In any other case, no decree for eviction shall be passed in any such suit, if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases, then due and thereafter, (1) continue to pay or tender in Court such*

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rent and permitted increases till the suit is finally decided; and (ii) also pay costs of the suit as directed by the Court."

The legislature has also provided explanation under Section 12 which also plays a very important role in determining the readiness and willingness on the part of the tenant to pay rent. It reads as under:

XXX xxx XXX XXX

"Explanation In any case, where there is a dispute AS to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

It could very well be seen from aforesaid provision that if the tenant disputes the standard rent or permitted Increases claimed by his landlord and he makes an application under Section 11 within one month after the receipt of the notice of demand under Section 12(2) and thereafter pays rent or permitted increases as per the order of the Court the tenant shall be deemed to be ready and willing pay. If the conditions laid down in the explanation are fulfilled and observed by the tenant, then there is a conclusive proof of tenant's readiness and willingness to pay the rent.

21. In Vora Abbaabhai Alimahomed V. Haji Qulamnabi Haji

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Safibhai. V (1964) Gujarat Law Reporter 55, it has been observed by the Supreme Court that:-

> *"Where there is a dispute as to the standard rent, the tenant would not be in a position to pay or tender the standard rent, on the first day of hearing and fixing of another date by the would be for Coset ineffectual, The payment or tender until the standard rent is fixed. the Court would in such a case on on or application of the tenant, take up the dispute as to the standard rent in the first instance, and having fixed the standard rent, call upon the tenant to pay or tender such standard rent so fixed, on or before a date fixed. If the tenant pays the standard rent fixed, before the date specified, and continues to pay or tender it regularity till the suit is finally decided, he qualifies for the protection of clause 2(b). If in an appeal filed against the decree, the standard rent is enhanced, appeal Court may fix a date for payment of difference, and if on or before that date difference the requirement is paid, Sec.12(3)(b) would be complied with."*

These observations made by the Supreme Court indicate that the Court would, in such a case, the application of the tenant, take up the dispute to standard in the first instance, and having fixed the standard rent, call upon the tenant to pay tender such standard rent so fixed, on or before the date rent fixed etc. It is evident that in the instant case, the tenant who had not complied with the order passed regarding depositing of the interim rent etc. in the Court, did not throughout the trial any such application requesting the Court take up the dispute as to standard rent the first instance.

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21.1. The further observations made in the aforesaid decision are

> *"The explanation to Sec. 12(4) of the Act enacts a role of evidence. If after service of the notice upon the tenant by the landlord under sub-sec. (2) of Sec.12 the tenant makes an application under sub-sec.(2) of Sec.11 before the expiry of a month and thereafter pays or tenders regularly the amount of interim rent specified by the Court till the disposal of the suit, the Court is bound to presume that tenant the at the date of the decree ready and willing to pay the standard rented permitted increases.*

In the instant case, this also has not been done by the tenant. It is, therefore, evident that it cannot be presumed in the instant case that the tenant was at the date of the decree ready and willing to pay the standard rent and permitted increases.

21.2. It is further observed:

> *"Sec. 12(3)(b) of the Act requires the tenant to pay the standard rent and not the interim rent, and for the purpose of that clause the expression "standard rent" may not be equated with "interim rent" specified under sec. 11(2). Compliance with an order for payment of interim rent is made by the Explanation to sec. 12 conclusive evidence of the readiness and willingness to pay the standard rent, but that by itself is not a ground for holding that the interim rent which may be specified under sub-sec. (3) of Sec.11 is standard rent fixed under sub-sec. (1) of Sec.11."*

These observations made by the Supreme Court would

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indicate that even if the tenant had complied with the order passed in miscellaneous proceedings regarding depositing of arrear on the basis of interim rent fixed and the interim rent had been paid regularly on the specified date, as directed, that by itself would not have been sufficient to claim protection under sec-12(3) of the Act, as the interim rent cannot be equated with the standard rent

21.3. The relevant observations made by the Supreme Court at pages 62 and 63 in paras 12 to 15 are:

> *"It is true that the statute requires the tenant to pay or tender in Court standard rent at the rate which may still remain to be fixed by order of the Court such order itself being liable to be varied or modified by an order ot superior Court. But that is not a ground for departing from the definition supplied by statute. The Legislature has the conditions on which the tenant may quality for prescribed protection of his occupation, and one of the important conditions is the readiness and willingness to pay the standard rent permitted increases, which may be proved by obtaining of order of the Court fixing the rate of standard rent and complying therewith or by complying with the Explanation to Sec. 12 or otherwise."*

These pertinent observations made by the Supreme Court, in my opinion, pin-point as to how this question could be resolved. It states that the tenant may qualify for protection of his occupation which is to be done by proving his readiness and willingness standard rent and permitted increases. could be proved: (1) by obtaining the order of the

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Court fixing the rate of the standard rent and complying therewith, or (2) by complying with the explanation to section 12 of otherwise."

19. In background of aforesaid aspects, what could be noticed that learned advocate Mr.Mehta mainly relied upon judgment in the case of R.N.Suthar (supra) and judgment in the case of Vora Abbasbhai Alimahomed (supra). Learned first appellate Court extracted relevant finding of judgment of Vora Abbasbhai Alimahomed (supra) and held that ratio laid down in the case of Vora Abbasbhai Alimahomed (supra) does not spell that tenant would avail protection under section 12(3)(b), inspite of the fact that he has not paid standard rent on the first date of hearing.

20. Center of dispute is arrears of rent and eviction under section 12(3)(b) of Rent Act. Let refer section 12 of the Rent Act, which reads as under :-

"12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is

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ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

[(1-A) Where by reason of riot or violence of a mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to,-

(a)the standard rent and permitted increases due for the premises,

(b)recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remain so destroyed, or unfit.]

[(1-B) Notwithstanding any thing contained in this Act, where by reason of earthquake or any other natural calamity any material part of premises is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to,-

(a)standard rent and permitted increases due for the premises.

(b)recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due, during the period in which such premises remained so destroyed or unfit.]

(2)No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882 (IV of 1882).

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(3)[(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any suit for recovery of possession.]

(b)In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and [thereafter,-(i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and (ii) pays costs of the suit, as directed by the Court.

(4)[Pending the disposal of any such suit, the Court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the Court thinks fit.

Explanation. - In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if, before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under subsection (3) of Section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

20.1. Title of section 12 of the Rent Act starts with negative clause "if tenant pays or is ready and willing to pay standard rent and permitted increase, ordinarily, the tenant shall not be ejected".

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21. In section 12(1) of the Rent Act, the lawmakers have used the word 'shall' followed by word 'not' meaning thereby, it is giving mandatory protection to the tenant and landlord shall not be entitled to recover possession of rented premises so long tenant pays or is ready and willing to pay amount of standard rent and permitted increases.

22. Section 12(2) defines for issuance of statutory notice and demand of arrears of rent for more than six months prior to filing of the suit.

23. Section 12(3)(a) of Rent Act enumerates condition that if landlord has demanded arrears of rent for more than six months by issuing statutory notice as defined in section 12(2) and if tenant within one month from the date of receipt of notice fails to pay standard rent or permitted increases as the case may, decree for eviction should be crystallized.

24. Section 12(3)(b) of the Rent Act applies to any other cases, but again starts with negative clause no decree for eviction shall be passed in any suit if, on the first day of hearing the suit or on or before such other date as the Court may fix, the tenant pays

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or tenders in Court the standard rent and permitted increases then due as directed by Court.

25. Explanation to section 12 of the Rent Act indicates that if there is any dispute as to the amount of standard rent or permitted increases recoverable under the Act, the tenant shall be deemed to be ready and willing to pay such amount before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increase specified in the order made by the Court.

26. Section 11 of the Rent Act is in regards to fixing standard rent, it reads as under :-

> *"11. Court may fix standard rent and permitted increase in certain cases.*
>
> *(1)In any of the following cases the Court may, upon an application made to it for that purpose, or in any suit or proceeding, fix the standard rent at such amount, as, having regard to the provisions of this Act and the circumstances of the case, the Court deems just-*
>
> *(a)where any premises are first let after the [specified date] and the rent at which, they are so let is in the opinion of the*

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Court excess; or

(b)where the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in sub-clauses (i) to (iii) of clause (b) of the sub-section (10) of Section 5; or

(c)where by reason of the premises having been let at one time as a whole or in parts and at another time in parts or as a whole, or for any other reasons, any difficulty arises in giving effect to this part; or

(d)where any premises have been or are let rent-free or a at nominal rent or for some consideration in addition to rent; or

(e)where there is any dispute between the landlord and the tenant regarding the amount of standard rent.

(2)If there is any dispute between the landlord and the tenant regarding the amount of permitted increase the Courts may determine such amount.

(3)[If any application for fixing the standard rent or for determining the permitted increase is made by a tenant who has received a notice from his landlord under subsection (2) of Section 12, the Court shall make an order directing the tenant to deposit in Court forthwith, and thereafter monthly or periodically, such amount of rent or permitted increases as the Court considers to be reasonably due to the landlord pending the final decision of the application, and a copy of such order shall be served upon the landlord. Out of the amount so deposited, the Court may make order for the payment of such reasonable sum to the landlord towards payment of rent or increase due to him, as it thinks fit. If the tenant fails to deposit such amount, this application shall be dismissed.

(4)Where at any stage of suit for recovery of rent, whether with or without a claim for possession of the premises, the Court is satisfied that the tenant is withholding the rent on the ground that the rent is excessive and standard rent should be fixed, the Court shall, and in.any other case if it appears to the Court that it is just and proper to make such an order the Court may, make an order directing the tenant to deposit in Court forthwith such amount of rent as the Court considers to be reasonably due to the landlord. The Court may further make an order directing the tenant to

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deposit in Court, monthly or periodically, such amount as it considers proper as interim standard rent during the pendency of the suit. The Court may also direct that if the tenant fails to comply with any such order within such time as may be allowed by it, he shall not be entitled to appear in or defend the suit except with leave of the Court which leave may be granted subject to such terms and conditions as the Court may specify.

(5)No appeal shall lie from any order of the Court made under sub-section (3) or (4).

(6)An application under this section may be made jointly by all or any of the tenants interested in respect of the premises situated in the same building.] [These sub-sections were substituted for sub-section (3) by Gujarat 57 of 1963, section 11(2).]

27. Section 11(1) of the Rent Act enumerates various conditions to fix standard rent which indicates where in the opinion of Court standard rent is excessive or the Court is satisfied that there is no sufficient evidence to ascertain the rent at which the premises were let in any one of the cases mentioned in sub-clauses (i) to (iii) of clauses (b) of sub section (10) of section 5 by reason of premises having been let at one time, as a whole or parts and at another time in part or as a whole, or for any other reasons, the Court finds difficult to fix rent or any premises have been or are let rent free or at nominal rent or for some consideration in addition to rent or where there is any dispute between the landlord and the tenant regarding amount of standard rent.

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28. Section 11(2) of the Rent Act in regard to dispute between landlord and tenant regarding amount of permitted increase.

29. Section 11(3) of the Rent Act is procedural provision whereby if any application for fixing standard rent or for determining the permitted increase is made by tenant who has received notice from his landlord under section 12(2), the Court shall pass necessary order directing the tenant to deposit in Court forthwith such amount of rent, monthly or periodically, such amount of rent or permitted increase as the Court considers to be reasonably due to landlord pending final decision of the application and if tenant fails to deposit such amount, such application for fixing standard rent ought to have been dismissed.

30. Section 11(4) of the Rent Act gives right to landlord to file necessary application for striking of defence, if tenant is withholding rent on the ground that rent is excessive and standard rent should be fixed and the Court having satisfied and found it justifiable to make order directing the tenant to deposit in Court forthwith such amount of rent as the Court considers to

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be reasonably due to the landlord. Such direction may contain to deposit amount of rent monthly or periodically. Such amount is considered as interim standard rent during pendency of the suit and if tenant fails to comply such order within time, which may be allowed by the Court, he shall be prevented from appearing or defending the suit except with leave of the Court.

31. In background of above statutory scheme, if we take submission of learned advocate Mr.Mehta that tenant was not aware about standard rent as only interim standard rent was fixed and interim standard rent cannot be equated with standard rent contained under section 12(3)(b) of the Rent Act which mandates to deposit entire arrears of standard rent before first date of hearing, and standard rent which was fixed at the end of the suit since has been deposited by tenant, he is protected under section 12(3)(b) of the Rent Act is concerned, it is admitted position that statutory notice (Exh.17), validity of which has been vividly discussed by learned Appellate Court and held to be legal and valid, claims arrears of rent from 01.05.1989 till 31.05.1995. Notice was issued on 22.07.1995 claiming arrears of rent at Rs.100/- per month for 73 months, total outstanding arrears of rent was Rs.7300/- in addition thereto, claim was

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made towards house tax, water tax etc., in total claim of Rs.8626.26 was made. Reply to the notice is at Exh.16. Tenant raised contention that rent claimed by landlord is not standard rent. Rented premises was let at Rs.94/- per month to the tenant. The tenant was not responsible to pay house tax, education tax etc. as it was not in existence when rented premises was let to him. Tenant has claimed Rs.50/- as standard rent. Tenant denied that rent arrears from 01.05.1989 but claimed that erstwhile landlord was not accepting rent from 01.06.1993 till 31.07.1995. Importantly, what could be noticeable that tenant raised contention that rent claimed by landlord in statutory notice is not standard rent. The tenant has also filed application being Civil Misc. Application No.355 of 1995 under section 11(1) of Rent Act to fix the standard rent and claimed that since he has insisted for rent receipt from June, 1993, previous landlord did not accept rent. Upon such pleadings, it was claimed to fix standard rent. Application Exh.5 was moved to fix interim standard rent, which was allowed and interim standard rent was fixed at Rs.94/- per month and learned Civil Judge, Junagadh by order dated 21.02.1996 directed tenant to pay interim standard rent at Rs.94/- per month and further directed to pay such amount on monthly

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basis.

32. In the statutory notice, landlord claims arrears of rent from 01.05.1989. In reply tenant claims rent is arrears from 01.06.1993 by denying that current landlord is not entitled to recover amount of rent due to previous landlord.

33. Section 12(3)(b) says that tenant in order to prove his case and to avail protection to his tenancy; should be ready and willing to pay standard rent. He is obliged to tender or deposit standard rent and permitted increase due before the first date of hearing of the suit or before such date as the Court may fix. The issues were framed on 29.01.1998. It is admitted position that on the date of fixing issues, tenant on his own calculation fell short of paying arrears of rent. As per calculation placed at page no.28 of the paper book, on 25.01.1996, the tenant paid interim standard rent of Rs.3102/- (Rs.94/- per month) for the period commencing from 01.06.1993 to 28.02.1996; on 12.03.1996, tenant paid Rs.564/- towards arrears of rent for six months i.e. 01.03.1996 to 31.08.1996; tenant has deposited Rs.940/- for the period from 01.09.1996 to 30.06.1997, next date of depositing standard rent was 16.02.1998 i.e. later than date of first

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hearing, therefore, it cannot be considered. Admittedly, as on the date of first hearing, the tenant had only paid Rs.4606/- towards arrears of rent.

34. If we go by words of tenant that rent is arrears from 01.06.1993, then it would be arrears of 55 months on the date of first hearing. The total amount would be Rs.5170/- as per interim standard rent fixed by the learned Court below. Tenant has deposited Rs.4606/- prior to first date of hearing. Tenant fell short of amount of Rs.564/-. If we go by claim of arrears of rent made in statutory notice by landlord, on the date of first hearing, it comes to arrears of 110 months i.e. arrears of Rs.10,340/- deducting Rs.4606/- paid by tenant before first date of hearing, thus, total arrears would come to Rs.5734/-. In these circumstances, in either of the situation, tenant fell short in paying standard rent or interim standard rent, which itself proves that tenant was not ready and willing to pay arrears of rent.

35. Learned advocate Mr.Mehta argued that since tenant has raised contention of standard rent, which cannot be equated with interim standard rent and was not aware what would be

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final arrears of standard rent, he fell short of few amount, therefore, it cannot be held that tenant is not ready and willing to pay standard rent. This Court in the case of ***Jenabai Mohmed v/s. Gulaabbas Ismailji [1971 GLR 819]*** after considering judgment of Hon'ble Supreme Court in the case of ***Vora Abbasbhai Alimahomed*** (supra), in identical situation also after referring to various pronouncements, held that tenant may qualify for protection of his occupation which is to be done by proving his readiness and willingness to pay the standard rent and permitted increases. It could be proved by obtaining the order of the Court fixing the rate of standard rent and complying therewith or by complying with the explanation to section 12 as the case may be. Relevant para 27 to 31 reads as under :-

> *"27. The two decisions, in Ratilal v. Ranchhodbhai, IX Gujarat Law Reporter 48 and Harnamsing Lalsingh v. Gangaram Ichharam, IX Gujarat Law Reporter 323, referred to by me earlier, have also been referred to (herein. After referring to those decisions and the decision in C.SP. & L. Corporation v. Kerala State, A.I.R. 1965 Supreme Court 1689, at page 294 the following pertinent observations have been made :*
>
> *"The Court must consider the fact that none need apply in vain. If the application was bound to be ineffective, as observed by Their Lordships of the Supreme Court in Vora Abbasbhai's case, it would be obvious that where the Court postpones resolution of the dispute till the date of the judgment, there would be no opportunity for the tenant to apply under sec. 12(3)(b) until the Court fixes the standard rent. Another well settled principle was that no litigant ever*

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suffers by any mistake of the Court and so if the Court had postponed resolution of the standard rent dispute till the end, the tenant could not be deprived of his statutory protection under sec. 12(3)(b), merely on the ground of a technicality that he could have moved the Court earlier to resolve this dispute. The Legislature has itself conferred discretion on the Court to meet with such a situation by providing that the Court might only in its discretion fix another date for payment and by arming it suitably to direct even costs being paid by the tenant. This discretion is, therefore, conferred on the Court for doing justice between the parties. The only material question which the Court must always keep in mind is the question of the readiness and willingness of the tenant to pay which must continue till the date of the decree. This readiness can be proved by the tenant by resorting to the explanation read with sac. 12(1) or by obtaining order under sec. 11(3) and complying with it or by complying with the provisions of sec. 12(3)(b) or otherwise. Even if the tenant did not avail of the first opportunity within one month after the first notice under sec. 12(2), in such a case where there was dispute about the standard rent he could show his willingness by complying with the explanation or even if he had not done that, by showing that he had complied with sec. 12(3)(b). It is only in cases where there is a dispute of standard rent that the case presents practical difficulties as pointed out by their Lordships. Because sec. 12(3)(b) by its very terms is incapable of compliance until the standard rent dispute is resolved. The whole contention of-Mr. Nanavati is that the settled position of law envisages a further obligation on the tenant to apply for resolution of the standard rent dispute at an early stage for getting protection of sec. 12(3)(b) even though there is nothing in the words of sec. 12(3)(b) to justify, any such construction. In view of the aforesaid Division Bench decisions it is clear that in all such cases the Court can fix another date not only on the application of the tenant but on the application of the landlord as well, or even suo motu and even after the first date of hearing has passed. If, however, the Court has postponed the resolution of this dispute till all the issues are settled in the case, the Court must consider the question about the exercise of its discretion which must be exercised in the light of special circumstances in the case so that no injustice is done to the

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tenant because this dispute was taken up at the end of the case and because the tenant was not in a position to comply with sec. 12(3)(b) until the standard rent was fixed."

At page 295, the pertinent observations made are :

"In certain cases the Court might have to consider whether it should fix another date for making good difference if it was otherwise satisfied of the tenant's readiness and willingness to pay. The law, however, imposes a fetter on the power of the Court to pass a decree for eviction, without considering this material question as to whether the tenant was protected under sec. 12(3)(b). If, therefore, benefit of sec. 12(3)(b) could be availed of only after the Court fixes the standard rent, it would be the mandatory duty of the Court to exercise its power suo motu so that the benefit of sec. 12(3)(b) is not rendered illusory. Without applying its mind to this relevant question the Court cannot pass a decree for possession straight way on the mere assumption that sec. 12(3)(b) was not complied with even though that the tenant was not in a position to comply with sec. 12(3)(b)." In my opinion, the observations which follow thereafter, pin-point the real ratio of the decision of the Division Bench of this Court. They are: "The question being one of discretion, in proper cases the Court can refuse to fix another date for paying the deficit, if that is the only way in which justice can be done as in cases where the Court would not be satisfied at all of the tenant's readiness and willingness."

These observations made in clear terms by the Division Bench of this Court clearly negative the contention raised by Mr. Shah, that there is an absolute obligation cast upon the Court to fix another date and if the Court had not fixed any such date and the tenant had not got the opportunity to pay for tender the standard rent and permitted increases then due, the protection given to the tenant would be illusory in all cases regardless of the circumstances of the case. In the instant case, in the miscellaneous proceeding, the interim rent was fixed and the tenant was directed to pay the arrears due from the date of the last receipt, dated 15-7-1963, on or before 5-9-1964 and to pay rent every month on or before 5th of each month on the basis of interim rent fixed at Rs. 5/-. She did not comply with that order. In view of the explanation and the Supreme Court's decision, in Shah Dhansukhlal v. Shah {Chhaganlal Dalichand (Supra) it could

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be said without any doubt that the tenant was not ready and willing to pay the standard rent and permitted increases then due. In these circumstances, the Court would be justified in not giving protection to the tenant under sec. 12(3)(b) of the Act and it would not be obligatory upon the Court to fix another date as has been urged by Mr. Shah.

28. It is further observed by the Division Bench in the aforesaid decision at page 295 :

"Therefore, we cannot agree with the broad proposition advanced by Mr. Nanavati that there is no power in the Court to proceed suo motu in such cases and that the ratio of the decision in Ambalal's case or in Vora Abbasbhai's case is that the tenant mast apply for the earlier fixation of the date if he wants to get benefit of sec. 12(3)(b) and if he failed to do so, the Court is left with no discretion and that it must pass a decree for eviction. In fact Ambalal's case lays down general principles which are applicable to all cases where the tenants are in arrears of rent, while this question assumes importance only in cases where there is a dispute about standard rent and the tenant is not in a position to comply with sec. 12(3)(b) until the standard rent is fixed. It is in such cases that it would be a mere technicality to insist that the tenant must have moved the Court to resolve the dispute at an early stage. The Court must look to the question of doing substantial justice by satisfying itself as to whether it is a case where it must exercise discretion suo motu as it had postponed resolving the dispute about standard rent, till the decision of all the issues. In cases where only thing required is regularizing payments made the Court would readily exercise its discretion while in other cases it can even order costs when it gives further time for making good the deficit in payments or it may even totally refuse to exercise discretion. But in all cases the Court has to exercise, distention judicially on the facts and circumstances of the case." These observations further support my conclusion that a discretion is vested in the Court to fix another date. It is not an absolute obligation on the Court to fix it. The wording of the relevant part of sec. 12(3) for of the Act is indicative of that conclusion.The words used are : 'On or before such other date as the Court may fix'. The word 'may' used in that phrase is indicative of that

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conclusion. If really the Legislature intended that the Court must fix such other date, the Legislature would not have used the word "may". The Division Bench of this Court in the aforesaid decision, has in terms stated that the Court has to exercise discretion judicially on the facts and circumstances of the case. In a given case, it may even totally refuse to exercise the discretion. These [observations made by the Division Bench negative the contention of Mr. Shah that it is obligatory on the Court to fix such date regardless of the facts and circumstances of the case and that having been not done, the decree is not in accordance with law.

29. The latest decision of the Supreme Court in Shah Dhansukhlal v. Shah Chhaganlal Dalichand (Supra), was relied upon by Mr. Nanavati before the Division Bench of this Court in the aforesaid decision. That decision has been distinguished by the Division Bench, observing.

"In that case their Lordships only negatived the contention based on the decision of their Lordships in Shah Bhojrajkaur Oil Mills v. Subhashchandra, 1962(2) S.C.R. 159, that the provisions of sec. 12(1) must be read along with the explanation. Therefore, to be within the protection of sec. 12(1) where the tenant raises dispute about the standard rent within one month of the service of the notice under sec. 12(2) he must make application to the Court under sec. 11(3) and thereafter pay or tender the amount of standard rent or permitted increases, if any, specified in the interim order made by the Court. Mr. Nanavati vehemently relied upon the further observations, 'if he does not approach the Court under sec. 11(3) it is not open to him thereafter to claim protection under sec. 12(1).' These observations of Their Lordships are only to be understood in the context of that case. Their Lordships, however, never meant to hold that even if the tenant made an application under sec. 11(3) for fixation of standard rent and for fixing interim rent and if the Court did not specify any such amount the tenant must be held not to have complied with the explanation and that he was not within the protection of sec. 12(1). Until interim rent was specified by the Court the tenant could not be said to have not complied with the explanation and sec. 12(1) when read together. In that case, Their Lordships had in fact found that the tenant did not make any application under sec.

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11(3) and, therefore, he was not entitled to protection under sec. 12(1). He was also not entitled to protection of sec. 12(3) (b) as at the first date of hearing there were arrears and even subsequently the tenant failed to pay or tender any amount in the Court. In these circumstances, Their Lordships held that the tenant was not ready and willing to pay. It is clear from this decision that no such principle has been laid down as contended by Mr. Nanavati that unless the tenant made an application asking the Court to resolve earlier the dispute about the standard rent, the Court had no jurisdiction to exercise its discretion suo motu to fix the time after it resolved dispute even for regularising the payments. In fact, this question was not before Their Lordships. In this view of the matter, we cannot agree with any of the two contentions raised by Mr. Nanavati that the tenant in the present case had not complied with the explanation even though he made an application under sec. 11(3) and when no amount of interim rent was fixed by the Court. Similarly also we cannot agree with .him that under the settled law the Court has neurosecretion to exercise discretion motu if the tenant did not move the Court at earlier stage to resolve the dispute of standard rent."

Sitting as a single Judge, I am bound by the decision of this Division Bench. Apart from it, it is significant to note that the emphasis in the ratio was that the Court should do complete justice to the parties and the litigants should not suffer on account of the mistake of the Court. It was found in view of the facts and circumstances of the case that it was not possible for the tenant to comply with the conditions mentioned in the Explanation given to sec. 12 of the Act, as the Court did not fix any interim rent, as contemplated by sec. 11(3) of the Act. In the instant case, the Court did fix the interim rent and directed the tenant to pay the rent regularly on or before 5th of every month. The tenant did not comply with it. It is, therefore, evident that explanation to sec. 12 of the Act would apply and its provisions could be pressed into service and it could be, without any doubt, said that the petitioner-tenant was not ready and willing to pay the rent due. It could not be said that it was not possible for her to comply with the order, as no such order was passed, as in the case the Division Bench had to decide. As said by me earlier, the decision of the Supreme Court in Vora Abbasbhai v. Haji Gulamnabi (supra) indicates a possibility that even

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such compliance by itself would not be sufficient.

30. It cannot be gainsaid that there is some apparent conflict in the various decisions and it may be necessary to resolve that apparent conflict by referring to the various provisions of sec. 12 of the Act and consider the different sub-sections of sec. 12 of the Act and interpret them, keeping in mind the legislative intent. In the instant case, taking any view of the matter, by following the aforesaid Supreme Court decision in Shah Dhansukhlal v. Shah Chhaganlal Dalichand (Supra) or by following the aforesaid decision of the Division Bench of this Court in Nanji Pancha v. Daulal (supra), there is no escape from the conclusion that this tenant cannot be said to be ready and willing to pay the standard rent. She is not entitled to protection under sec. 12(3)(b) of the Act. Even on the basis of the interim rent fixed in the miscellaneous proceeding, she had not deposited the amount due at the date of the first hearing of the suit. She had also (not deposited such amount during the pendency of the suit. The two Courts below have, therefore, taking any view of the matter, in my opinion, come to the correct conclusion that the petitioner is not entitled to protection under sec. 12(3)(b) of the Act and the decree for eviction could be passed against her on the ground of non-payment of rent.

31. Another argument advanced by Mr. Shah in regard to the validity of the notice was that this notice is bad as the provisions of sec. 12(2) of the Act have not been substantially complied with. This argument was based on the ground that there was no specific demand of arrears of rent in the notice. What was mentioned in the notice was that particular amount of rent was due by the tenant to the landlord. It was further stated that the tenant having failed to pay the arrears of rent for a period over six months, the landlord had become entitled to get a decree on the ground of non-payment of rent. The tenancy was determined.

It was an unconditional determination of the tenancy. It was not stated that if the tenant did not pay up these arrears within one month after the receipt of the notice as "contemplated "by sec. 12 of the "Act, the tenancy would be then only determined. Submission was that the tenor of the

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notice was that the tenancy was being determined unconditionally and even if the tenant pays ,the arrears of rent, he tenancy was not contemplated to be continued. The tenant was |"asked- to vacate and handover possession of the leased premises till 31st August, 1964 and she was also called upon to pay the rent arrears. That would be submitted by Mr. Shah, the demand of a creditor for his dues and not a demand of arrears of rent as contemplated by sec. 12 of the Act. The notice, Ex. 27, was, therefore, bad and consequently, no decree for eviction can be passed on the ground of non-payment of rent. In support of this argument of his, he invited my attention to the decision of a single Judge of Allahabad High Court in Ram Krishna v. Mahomed Yahia, A.I.R. 1960 Allahabad 482. Sec. 3(1)(a) of U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947) was the subject-matter of interpretation by Dhavan, J., in that case. The relevant observations made therein at page 483, relied upon by Mr. Shah are as under :

"The suit must fail on another ground because the notice of demand was not in accordance with law. Clause (a) requires the landlord to send a notice of demand to the tenant requiring him to pay the arrears of rent within a month. The notice sent by the plaintiff translated into English, runs thus (the translation was read out to both learned counsel and approved by them) :

A sum of Rs. 131-4 was due from you as rent for the period 1st October, 1952 to 30th April 1953. In spite of dues and demands you are not paying this rent but are adopting delaying tactics by all kinds of excuses. Now, on account of your failure to pay rent, we hereby give you notice that, after occupying this shop till 31st May, 1953 and then after vacating it and handing over possession to me on the 1st June, 1953, you should pay a sum of Rs. 150/- as rent for the period from 1st October, 1952 till 31st May, 1953, otherwise, after the expiry of the period of this notice, I shall file a suit in the Civil Court against you for possession and recovery of rent'."

36. Applying the aforesaid ratio along with explanation of section 12 of the Rent Act, argument of learned advocate

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Mr.Mehta would be void. Explanation to section 12 of the Rent Act casts obligation upon the tenant to make application to the Court under sub-section (3) of section 11 to claim that he shall be deemed to be ready and willing to pay such amount and thereafter, pays or tenders the amount of rent or permitted increases specified in the order made by Court. Tenant cannot run away from the mandate spell from explanation of section 12 of the Rent Act on the ground that since learned Trial Court has only fixed interim standard rent and he was not aware what could be standard rent. Tenant was obliged to pay interim standard rent before first date of hearing to sustain his claim, that he is ready and willing to pay standard rent. In any case, if standard rent is less than interim standard rent, tenant would be at liberty to claim set off and if it is fixed higher than interim standard rent, then tenant would be at liberty to deposit standard rent. To show readiness and willingness, tenant is required to pay interim standard rent as fixed by the Court on the first date of hearing. Explanation to section 12 of Rent Act is bridging link between section 11 and 12(3)(b) of the Rent Act. Therefore, tenant cannot escape from liability to pay interim standard rent on the first date of hearing on the ground that he was not aware about what would be standard rent. In order to

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claim protection under section 12(3)(b) of the Rent Act, tenant is required to prove that he was ready and willing to pay standard rent and permitted increases which includes interim standard rent fixed by the Court.

37. Apt to recollect that in the present case, learned Trial Court fixed interim standard rent by order below Exh.5 and directed the tenant to deposit arrears of rent by fixing interim standard rent at Rs.94/- and further directed to deposit standard rent regularly as it fell due. Thus, failing to deposit standard rent including interim standard rent on the first date of hearing or fell short in paying or depositing standard rent including interim standard rent on first date of hearing, would construe that tenant was not ready and willing to deposit standard rent and consequently, tenant loose protection under section 12(3)(b) of the Rent Act.

38. Hon'ble Supreme Court in the case of **Yusufbhai Noormohammed Jodhpurwala v/s. Mohmmed Sabir Ibrahim Byavarwala [(2015) 6 SCC 526]** while reversing judgment of High Court ruled in favour of landlord holding that on the first date of hearing tenant tried to clear arrears of rent but fell short

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of Rs.270/-, therefore, tenant would not be entitled to protection under section 12(3)(b) of Rent Act. Relevant para 8 to 10 reads as under :-

> *"8. The law on Section 12 (3) (b) is well settled by a series of judgments of this Court. In Ganpat Ladha v. Sashikant Vishnu Shinde, (1978) 2 SCC 573, this Court overruled a judgment in Kalidas Bhavan Bhagwandas' case in which a Division Bench of the Bombay High Court thought that it was open under Section 12(3)(b) to exercise a discretion in favour of the tenant. In para 11 of the said judgment, it was stated:*
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> *"11. It is clear to us that the Act interferes with the landlord's right to property and freedom of contract only for the limited purpose of protecting tenants from misuse of the landlord's power to evict them, in these days of scarcity of accommodation, by asserting his superior rights in property or trying to exploit his position by extracting too high rents from helpless tenants. The object was not to deprive the landlord altogether of his rights in property which have also to be respected. Another object was to make possible eviction of tenants who fail to carry out their obligation to pay rent to the landlord despite opportunities given by law in that behalf. Thus Section 12(3)(a) of the Act makes it obligatory for the Court to pass a decree when its conditions are satisfied as was pointed out by one of us (Bhagwati, J.) in Ratilal Balabhai Nazar v. Ranchhodbhai Shankerbhai Patel [AIR 1968 Guj 172 : (1968) 9 Guj LR 48] . If there is statutory default or neglect on the part of the tenant, whatever may be its cause, the landlord acquires a right under Section 12(3)(a) to get a decree for eviction. But where the conditions of Section 12(3)(a) are not satisfied, there is a further opportunity given to the tenant to protect himself against eviction. He can comply with the conditions set out in Section 12(3)(b) and defeat the landlord's claim for eviction. If, however, he does not fulfil those conditions, he cannot claim the protection of Section 12(3)(b) and in that event, there being no other protection available to him, a decree for eviction would have to go against him. It is difficult to see how by any judicial valour discretion exercisable in favour, of the tenant can be found in Section 12(3)(b) even where the conditions laid down by it are satisfied to be strictly confined within the limits prescribed for their operation. We think that Chagla, C.J.,*

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was doing nothing less than legislating in Kalidas Bhavan case in converting the provisions of Section 12(3)(b) into a sort of discretionary jurisdiction of the Court to relieve tenants from hardship. The decisions of this Court referred to above, in any case, make the position quite clear.

Section 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts." This statement of the law was followed in Jamnadas Dharamdas v. Joseph Farreira (1980) 3 SCC 569 at para 12 and Mranalini B. Shah v. Bapalal Mohanlal Shah (1980) 4 SCC 251 at para 12.

9. In the judgment cited by the impugned judgment, namely Vasant Ganesh Damle (supra), this Court categorically held that the right conferred upon a bonafide tenant can be availed of only twice under the Act and not thereafter.

10. On facts, it is clear that the tenant was in arrears of rent prior to the filing of the suit and continued to be so. On the date of the first hearing of the suit, that is the date on which issues were struck, namely 3 rd August 1994, the rent that was paid admittedly fell short by Rs.270/-. It is clear therefore that assuming that the respondent is a bonafide tenant the right that is conferred upon him by the legislature can be availed of only twice and on both occasions the tenant was found to be in arrears. The High Court was wrong in interpreting Section 12(3)(b) purposively holding that so long as the High Court, in its discretion, feels that there is a readiness and willingness on the part of the tenant to pay rent, the High Court can in its discretion say that substantial compliance of Section 12(3)(b) is good enough for the tenant to escape eviction on the ground of non payment of arrears of rent. Having regard to the judgments of this Court and the fact that Section 12(3)(b) has been construed to be a mandatory provision which must be strictly complied with, the judgment under appeal has to be set aside, and the order of the appellate bench of Small Causes restored."

39. So far as judgment of this Court in the case of R.N.Suthar (supra) is concerned, Co-ordinate Bench did not notice and refer earlier judgment in the case of Jenabai Mohmed (supra),

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therefore, it does not help case of the appellant. Case of Vora Abbasbhai (supra) has been thoroughly discussed by this Court in the case of Jenabai Mohmed (supra) and judgment of Division Bench in the case of Nanji Pancha v. Daulal Naraindas [XI GLR 285].

40. Applying aforesaid ratio to the facts of the present case, since tenant fell short of paying rent of Rs. 564/- as per his own calculation and Rs.5734/- as per calculation of landlord before first date of hearing, it can be concluded that tenant was not ready and willing to pay standard rent including interim standard rent on the first date of hearing and as such he is not entitled for protection under section 12(3)(b) of the Rent Act.

41. In aforesaid circumstances, the Court has no option but to upheld eviction decree, which has been rightly passed by learned Trial Court and confirmed by learned Appellate Court. I see no reason to interdict with such well reasoned judgment passed by learned Appellate Court.

42. Since in this Revision Application, concurrent finding of learned Trial Court as well as learned Appellate Court is

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challenged, scope of interference is very limited. At this stage, reference is made to findings and observation of Hon'ble Apex Court in the case of **Patel Valmik Himatlal vs. Patel Mohanlal Muljibhai (Dead) Through Lrs. - 1998 (7) SCC 383.** While examining the ambit and scope of Section 29 of the Rent Act, Honble Supreme Court has observed as under :

> *"5. The ambit and scope of the said section came up for consideration before this Court in Helper Girdharbhai V/ s. Saiyed Mohamad Mirasaheb Kadri and Ors. (JT 1987 (2) SC 599) and after referring to a catena of authorities, Sabyasachi Mukharji, J. drew a distinction between the appellate and the revisional jurisdictions of the courts and opined that the distinction was a real one. It was held that the right to appeal carries with it the right of rehearing both on questions of law and fact, unless the statute conferring the right to appeal itself limits the rehearing in some way, while the power to hear a revision is generally given to a particular case is decided according to law. The Bench opined that although the High Court had wider powers than that which could be exercised under Sec. 115 of the Code of Civil Procedure, yet its revisional jurisdiction could only be exercised for a limited purpose with a view to satisfying itself that the decision under challenge before it is according to law. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Did the High Court exceed*

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its jurisdiction.

6. The powers under Sec. 29(2) are revisional powers with which the High Court is clothed. It empowers the- High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision hut it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of evidence cannot be a ground for exercise of the revisional jurisdiction."

43. In aforesaid premises, present Revision Application stands dismissed. Interim relief granted earlier, if any, stands vacated. Record and proceedings, if any, be send back to learned Trial Court concerned.

44. In view of above, Civil Application No.2 of 2016 does not survive and accordingly, stand disposed of.

45. So far as Civil Application No.1 of 2019 is concerned, Office note stands disposed of by directing Registry to reconstruct Civil Application No.1 of 2019 and same is disposed of as it does not survive.

(J. C. DOSHI,J)

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After pronouncement of the judgment, learned advocate for the applicants requests to stay implementation, operation and execution of the judgment for a period of four weeks so as to enable the applicants to approach the higher forum. Considering the fact that the interim relief is operating since long, implementation, operation and execution of the judgment is stayed for a further period of four weeks from today.

(J. C. DOSHI,J)

SATISH