

Vasudev Vensimal Devnani vs Kabirwadi Mandir Trust Ahmedabad on 1 October, 2026

NEUTRAL CITATION

C/CRA/290/2026
(GJHC240339672026)

CAV JUDGMENT DATED: 01/10/2026

undefined

Reserved On : 28/07/2026

Pronounced On : 01/10/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 290 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Approved for Reporting

Yes

No

VASUDEV VENSIMAL DEVNANI

Versus

KABIRWADI MANDIR TRUST AHMEDABAD & ORS.

Appearance:

MR MEHUL SHAH, SR. ADVOCATE assisted by MR JENIL M SHAH(7840)

for the Applicant(s) No. 1

MR DHURVIK K PATEL(7769) for the Opponent(s) No. 1,2,3

CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

CAV JUDGMENT

1. The present revision application is filed under [Section 29\(2\)](#) of Gujarat Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "[Rent Act](#)") against the judgment and decree dated 18.03.2026 passed by Appellate Bench No.02 of Small Causes Court, at Ahmedabad, in Regular Civil Appeal No.121 of 2019, whereby the Appellate Court confirmed the judgment and eviction decree dated 03.07.2019 passed by Small Causes Court No.10, at Ahmedabad, in HRP Page 1 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined Suit No.425 of 2009.

2. The petitioner herein is original defendant-tenant and the respondents herein are original plaintiffs-landlord. For the sake of convenience and brevity, hereinafter, the parties will be referred to as per their original position/status in the suit. SHORT FACTS:

3. The plaintiff appears to have let out one shop at monthly rent of Rs.20/- to the defendant for his grocery business in the year 1981 by executing rent note (Exh.48) on 01.10.1981. Since the defendant was in need of second shop and the adjacent shop to the rented shop fell vacant, upon his request, the plaintiff let out another shop in favour of defendant by executing rent note (Exh.49) on 21.04.1994. The agreed rent of second shop was Rs.200/- per month. It can be seen from both the rent notes (condition No.6) that the defendant-tenant was not permitted to have material changes without prior permission of plaintiff-landlord and the defendant agreed that he will not put up any permanent construction and/or material alteration. The plaintiff used to issue two separate rent receipts to the defendant.

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NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined 3.1 Since the defendant removed the common wall between the two shops and failed to pay the rent from 01.04.2003 to 31.01.2009, HRP Suit No.425 of 2009 filed by landlord against

tenant on various grounds including a ground taken that, without prior written permission from landlord, tenant has removed the common wall between two shops let out to him and also constructed RCC loft (9 feet by 10 feet), removed the front shutter, put up RCC pillar between the two shops and accordingly change the identity of the rented premises. 3.2 Per contra, the tenant contested the suit by filing his written statement contending inter alia that removal of wall was with permission of plaintiffs and it was well within his knowledge that second shop was required for expansion of business of defendant, for which it was imminent to remove the common wall between two shops. It was stated that the wall between two shops removed and levelling of floor of shops also carried out in the year 1994 and after a period of limitation, the eviction suit filed. It was also stated that there was no permanent construction erected by tenant but due to the road widening by Ahmedabad Municipal Corporation (AMC), the necessary repair works required to be carried out in the Page 3 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined rented shops to use the shutters of both the shops, then the pillar was erected by tenant.

3.3 Upon appreciation of pleadings, the trial Court framed necessary issues. The parties appear to have submitted documentary and oral evidence in support of their case. After appreciation of evidence available on record, the trial court concluded that defendant failed to prove that removal of common wall was with the permission of the plaintiffs and it was done in the year 1994. At the same time, the trial Court recorded the findings of fact that construction of new shutter, pillar and shelf in the rented premises cannot be treated as a permanent structure. So far as issues as regards arrears of rent, greater hardship, bona fide requirement of landlord, etc. were decided in favour of tenant. Accordingly, the trial Court vide its judgment and decree dated 03.07.2019, decreed the suit in favour of plaintiffs-landlord only on the ground that the defendant-tenant breached the condition of the rent agreement as, the tenant removed the common wall without plaintiffs' prior written consent, thereby changing the identity of suit premises.

3.4 Thus, in view of the aforesaid finding and conclusion, the Page 4 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined trial Court decreed the suit in favour of plaintiffs by directing the defendant-tenant to handover the peaceful and vacant possession of rented premises to plaintiffs-landlord. 3.5 Being aggrieved and dissatisfied with the aforesaid judgment and eviction decree passed by trial Court, the defendant preferred Regular Civil Appeal No.121 of 2019 before Appellate Bench of Small Cause Court, at Ahmedabad. While adjudicating the aforesaid appeal, the Appellate Court found that findings so recorded by trial Court in regards to constructing new shutter, pillar and loft (shelf) in the rented premises cannot be considered as permanent structure is incorrect and required to be revisited. The Appellate Court recorded its own finding that the explanation to [Section 13](#) of Rent Act would not be applicable to the case at hand, inasmuch as no prior written permission was obtained by tenant from landlord before erecting the permanent structure. It was also observed that there was a breach of condition of terms of rent note by tenant by putting up such construction. Eventually, the Appellate Court also found that removal of the wall by defendant without taking prior written permission from landlord amounts to breach of [Section 13\(1\)\(b\)](#) of the Rent Act Page 5 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined read with [Section 108\(o\)](#) of the Transfer of Property Act, 1882. 3.6 As far as arguments advanced by the defendant before the Courts below that suit in question is time barred is concerned, both the Courts below have concurrently held against the defendant in this regard by observing that defendant failed to prove that removal of common wall was occurred in the year 1994 and as such the issue of limitation is considered to be mixed question of law and fact and having not framed such issue at the first instance, yet upon appreciation of evidence, they negated such submission.

4. Thus, in view of aforesaid, the Appellate Court also confirmed the eviction decree and accordingly, dismissed the aforesaid appeal filed by the defendant-tenant. Hence, present revision petition is filed against the concurrent findings of fact recorded by the Courts below against the petitioner-tenant. SUBMISSIONS OF PETITIONER-DEFENDANT-TENANT:

5. Mr. Mehul Shah, learned Senior Counsel assisted by Mr. Jenil M. Shah, learned advocate for the petitioner, would submit that Courts below have committed a serious error in law by recording the finding of fact that a permanent structure Page 6 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined and alteration carried out by the defendant-tenant without obtaining prior written permission from landlord. It is submitted that second shop was let out to tenant in the year 1994 by landlord and at that time, the common wall between first let out shop and the second one was removed with permission of landlord, therefore, later on the landlord cannot be allowed to maintain the suit for eviction on the ground of breach of [section 13\(1\)\(b\)](#) of Rent Act and or rent note. 5.1 Mr. Shah, learned Senior Counsel, would further submit that Courts below have completely misconstrued the provisions of [Rent Act](#) which ultimately resulted into recording of perverse finding. It is submitted that tenant agreed not to put up permanent construction and/or material change of rented premises while executing rent note, is required to be considered in light of [Section 13\(1\)\(b\)](#) of Rent Act and other erection or changes carried out by the tenant not come within purview of said provision, cannot amount to breach of condition of rent note.

5.2 Mr. Shah, learned Senior Counsel, would further submit that every breach of terms of rent note would not entail eviction of tenant unless such breach of terms of tenancy is Page 7 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined directly connected to violation of [Section 13](#) more particularly [Section 13\(1\)\(b\)](#) of Rent Act for the case on hand. 5.3 Mr. Shah, learned Senior Counsel, would further submit that Appellate Court could not have reversed the finding of fact recorded by trial Court in relation to the construction of new shutter, pillar, and shelf in the rented premises, especially when no cross-objection/appeal filed by the plaintiff-landlord against such finding. It is submitted that in absence of cross-objection/appeal filed by landlord, the Appellate Court could not have exercised its power under [Order 41 Rule 33 of CPC](#) to reverse the finding of fact recorded by trial Court in relation to permanent structure.

5.4 Mr. Shah, learned Senior Counsel, would further submit that the Courts below committed serious error in law by not appreciating the expert report submitted by the tenant to show that the removal of common wall was happened in the year 1994, and there was no permanent structure erected by tenant just prior to filing of the eviction suit. It is submitted that plaintiffs-landlord failed to bring on record any expert's evidence to show that there was removal of wall by tenant in recent past prior to filing of suit, and whatever construction Page 8 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined was carried out by the tenant in the rented premises would damage the rented premises. It is also submitted that witnesses examined by the defendant also support the case of tenant that common wall was removed when the second shop was let out to the tenant in the year 1994.

5.5 Mr. Shah, learned Senior Counsel, would submit that without properly appreciating the evidence on record, and in absence of any inquiry undertaken by Courts below to reach to final conclusion that tenant has carried out permanent alteration in the rented premises, the impugned judgment and eviction decree warrants interference of this Court, as the findings of fact recorded by Courts below are perverse and grossly erroneous.

6. To buttress his arguments, Mr. Shah, learned advocate would rely upon the following judgments:

(i) [Bhabhutmal Rikhhaji Sharma and Anr. v. Manubhai Madhavji Patel and Ors.](#), 1980 (1) GLR 242.

(ii) [Bhavarlal Ganeshram v. Jasiben](#) wd/o. Ishwarlal Ramchand and Ors., 2006 (3) GLR 2230.

(iii) [Biswajit Sukul v. Deo Chand Sarda & Ors.](#), (2018) 10 SCC 584.

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(iv) Vaibhav Jain v. Hindustan Motors Pvt. Ltd., (2025) 2 SCC 208.

SUBMISSION OF RESPONDENTS-PLAINTIFFS-LANDLORD:

7. Per contra, Mr. Dhruvik K. Patel, learned advocate appearing for respondents has vehemently opposed this revision application contending inter alia that there is no gross error of law committed by Courts below which warrants any interference of this Court under its revisional jurisdiction. He would further submit that there is a concurrent finding of fact recorded by Courts below that tenant has committed breach of terms of tenancy by removing the common wall between two rented shops which resulted into change of its identity. It is further submitted that such finding of fact recorded by Courts below is neither perverse nor grossly erroneous and as per settled position of law, this Court should not interfere with the finding of fact.

7.1 Mr. Patel, learned advocate, would further submit that as per settled position of law, to challenge any adverse finding of fact recorded against respondent-plaintiff by the trial Court, the plaintiff is not required to file any cross-objection/appeal. It is submitted that the eviction decree passed by the trial Court Page 10 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined regarding the tenant's unauthorised permanent structure was in favour of the landlord, one of the factual findings recorded by Court was contrary to provisions of [Rent Act](#). It is further submitted that the Appellate Court acted well within its power as per [Order 41 Rule 22 of the CPC](#) to correct that erroneous finding.

7.2 Mr. Patel, learned advocate, would further submit that tenant failed to prove on record that with prior written permission from landlord, he removed the common wall between two rented shops in the year 1994, and having failed to prove such fact, the Courts below have correctly passed decree of eviction. It is submitted that by removal of common wall between the two rented shops, it completely changed the identity of rented shops, inasmuch as two shops became one shop due to removal of common wall.

7.3 Mr. Patel, learned advocate, would further submit that constructing the RCC pillar and loft as well as new shutter would definitely amount to putting up the permanent structure as per [Section 13\(1\)\(b\)](#) of Rent Act and as such, the tenant violated condition no.6 of Rent Note which ultimately resulted into passing of decree of eviction against him. It is submitted Page 11 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined that the expert had not carried out any test to determine the age of flooring and on presumption, the expert opined that wall was removed before 20 years from date of his report, i.e. 2018. It is submitted that the photographs which were produced on record by defendant would also not of year 1994, and in absence of any material evidence on record to show that the wall was removed in the year 1994, the tenant's plea that the suit was time-barred is unsustainable in law.

8. In support of his submissions, Mr. Patel, learned advocate, would rely upon following decisions:

(i) [Venkatlal G. Pittie & Anr. v. Bright Bros.](#) (Pvt.) Ltd., (1987) 3 SCC 558.

(ii) [Ramnikla And Co Thru Chetan Ramniklal Mehta & Ors.](#)

Versus Pareshkumar Shankarlal Trivedi, 2025 SCC OnLine Guj 5408.

9. No other and further submissions have been made by the learned advocates appearing for the respective parties. The petitioner has submitted a copy of paper-book containing the documentary and oral evidence led by the parties before the trial Court.

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NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined ANALYSIS AND REASONS:

10. At the outset, it is required to be noted that this revision application is filed against concurrent finding of fact recorded by Courts below against revisionist who happens to be original defendant-tenant that without plaintiffs-landlord prior written permission, the tenant removed the common wall between two rented shops, thereby changing the identity of suit premises (rented shops) and such an act amounts to breach of the condition no.6 of rent note. Resultantly, they considered it as violation of [Section 13\(1\)\(b\)](#) read with [Section 108\(g\)](#) of the Transfer of Property Act, 1882 by the tenant entail passing of the eviction decree.

11. Before advertng to the facts and the issue germane to this revision application, I would first like to refer to the Constitutional Bench judgment of the Hon'ble Apex Court, in the case of [Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh](#) - (2014) 9 SCC 78, wherein 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 Page 13 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined 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 reappraisal 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 Page 14 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined 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 reappraise 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) 11.1 Keeping in mind, the ratio [laid down by](#) the Apex Court in the aforesaid decision, I am now considering the submissions advanced by learned advocates appearing for the respective parties.

12. The controversy involved in this revision application lies within narrow compass: whether the tenant's removal of the common wall, done with the landlord's written consent in the year 1994, and subsequent construction of an RCC pillar, a loft, and new front shutter, amounts to erection of a permanent structure under per [Section 13\(1\)\(b\)](#) of Rent Act, and the suit was filed within period of limitation.

13. Before further delving into the issues, at this stage, I would like to quote [Section 13\(1\)\(a\)](#) and (b) of [Rent Act](#), Page 15 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined which read as follows:

"13. When landlord may recover possession.

(1)Notwithstanding anything contained in this Act [but subject to the provisions of [sections 15](#) and 15A,] [These words and figures were inserted by Bom. 3 of 1949, [section 3](#),] a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

(a)that the tenant as committed any act contrary to the provision of clause (a) of [section 108](#) of the Transfer of Property Act, 1882; or

(b)that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure.

Explanation- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the local authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney;"

14. The relationship between the plaintiffs and the defendant is of landlord-tenant. The first shop was let out to tenant on 01.10.1981 by landlord for monthly rent of Rs.20/- and thereafter, adjacent second shop was also let out to him on 21.09.1994 for monthly rent of Rs.200/-. There are two separate rent notes executed for both these shops. Even the landlord used to issue two different rent receipts for both the shops. As per the case of landlord, without his prior consent in Page 16 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined writing, tenant removed the common wall between two rented shops. On the other hand, it was a case of the tenant that the common wall was removed with consent of landlord. It is not in dispute that no written consent of landlord was on record, meaning thereby no written consent of landlord obtained by tenant prior to removal of common wall.

14.1 It is even not the case of tenant that by removing the common wall, it would not change the identity of suit premises. Even Mr. Shah, learned Senior Counsel, during the course of his submission would not dispute that by removing the common wall between two rented shops, it would change the identity of suit premises.

14.2 Since, it is not in dispute that by removal of common wall, it changed the identity of suit premises, in such circumstances, it would be apt to refer to the decision of this Court (Hon'ble Mr. Justice N.V. Anjaria, his lordship then was) in the case of Gheewala Shankerlal Mafatlal v. Gheewala Chandrakantbhai Valjibhai Decd. through Heirs, reported in 2013 (6) AIR(Guj) 286. The aforesaid decision was not disturbed by the Hon'ble Apex Court as, dismissed SLP (Civil) No. 35519/2013 on 29.11.2013. In the said decision, his Page 17 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined lordship after surveying various previous decisions in relation to a particular construction erected by tenant can be characterized as one of the permanent nature for the purpose of [Section 13\(1\)\(b\)](#), summarized the law as follows:

"[9] On the basis of various decisions surveyed above, to decide whether a particular construction erected by tenant can be characterized as one of permanent nature for the purposes of [section 13\(1\)\(b\)](#), tests which may be applied are summarised as under:

(i) The material used in the structure, durability of the structure and the very nature of it are dependable criteria;

(ii) What may be called as "the damage test" or "the test of removability". This test emanate from the provision of [section 13\(1\)\(b\)](#) itself, more particularly from the Explanation thereof.

If structure in question cannot be removed without causing a serious damage to the premises, such structure will be categorised as permanent structure;

(iii) The identity test. If the structure changes the whole identity of the rented premises, the same is also a test applicable. In other words, it is a test of offending structure vis-a-vis original structure of the premises. In this, the manner and method of structure erected and the dimensions of the structure, etc., would become relevant in addition to the type of structure itself;

(iv) The intention of the tenant in erecting the structure. It is also a criteria whether the use of the structure/construction is intended to last-till-tenancy lasts;

(v) The structure erected is without landlord's consent given in writing."

(Emphasis supplied) 14.3 Having appreciated the aforesaid facts and circumstances of the case at hand, the removal of common wall by tenant would last long until the tenancy survives, Page 18 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined thereby it amounting to change of identity by making one shop out of two. Indisputably, such removal of wall was without landlord's consent given in writing. Thus, it is undisputed that there was a removal of common wall between two rented shops by tenant without landlord's consent given in writing. This act of tenant is definitely in violation of [Section 13\(1\)\(b\)](#) of Rent Act.

15. According to my considered view, neither trial Court nor Appellate Court has committed any gross error of law by arriving at final conclusion that there was violation of [Section 13\(1\)\(b\)](#) of Rent Act by tenant. Even after going through the oral and documentary evidence on record, I am unable to agree with the submissions advanced by Mr. Shah, learned Senior Counsel that there was no violation of [Section 13\(1\)\(b\)](#) by tenant.

16. As far as treating the construction of an RCC pillar, loft, new front shutter at suit premises as permanent structure is concerned, it may be true that trial Court in its judgment recorded a finding that in view of the explanation to [Section 13\(1\)\(b\)](#) of Rent Act, such construction cannot be treated as permanent structure. Whereas the Appellate Court interfered Page 19 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined with such finding of fact in absence of any cross-objection/appeal by landlord and held otherwise. 16.1 Mr. Shah, learned Senior Counsel for the petitioner- tenant, has vociferously argued that such recourse adopted by the Appellate Court is without jurisdiction, inasmuch as in absence of any cross-objection/appeal, the Appellate Court could not have exercised its power to disturb the finding of fact recorded by trial Court. According to Mr. Shah, learned Senior Counsel, even the Appellate Court could not have overturn such finding by exercising its power under [Order 41 Rule 33 of CPC](#).

16.2 At first blush, this argument looks attractive, but upon deeper scrutiny, it fails. It is not in dispute that trial Court decreed the suit on the ground that there was a violation of [Section 13\(1\)\(b\)](#) of Rent Act by tenant, but while reached to such conclusion, at one stage, the trial Court did not agree to the plaintiffs-landlord that by erecting an RCC pillar, loft and new front shutter at the suit premises, would amount to erecting permanent structure as per [Section 13\(1\)\(b\)](#) of Rent Act. After amendment in [Order 41 Rule 22 of CPC](#) in the year 1976, such adverse finding of fact recorded by trial Court need Page 20 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined not required to be challenged in form of cross-objection/appeal by the plaintiff. This issue is no longer res integra. It would be profitable to refer to the decision of Hon'ble Apex Court in the case of [Saurav Jain vs. A.B.P. Design](#), reported in (2022) 18 SCC 633, wherein, after referring to the aforesaid amended provision and its previous decision, the Hon'ble Apex Court observed and held thus:

"[24] Order XLI Rule 22(2) of the CPC states that a "cross- objection shall be filed in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto." This Court in [S. Nazeer Ahmed v. State Bank of Mysore](#), 2007 11 SCC 75. elaborated on the form of objections made under [Order XLI Rule 22 CPC](#). In [Nazeer Ahmed](#) (supra), the respondent had filed a suit for enforcement of an equitable mortgage. In deciding the suit, the Trial Court rejected the argument of the appellant-defendant and held that the suit was not barred by [Order II Rule 2 of the CPC](#). However, the court dismissed the suit on grounds of limitation. On an appeal filed by the respondent before the High Court, the High Court observed that although the suit was barred by [Order II Rule 2 of the CPC](#), the appellant had not challenged this finding of the Trial Court by filing a memorandum of cross- objection. Thus, the High Court granted the respondent a decree against the appellant. When this finding of the High Court was assailed before this Court, Justice P.K Balasubramanyam held that a memorandum of cross- objection needs to be filed while taking recourse to Order XLI Rule 22 only when the respondent claims a relief that had been rejected by the trial court or seeks an additional relief apart from that provided by the trial court. The court held that a memorandum of objection need not be filed when the appellant only assailed a 'finding' of the lower court:

"7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross objections in terms of Order 41 Rule 22 of the Code, could not challenge Page 21 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negated to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a Page 18 of 37 C/AO/215/2024 JUDGMENT DATED: 18/07/2025 memorandum of cross-objections, was not entitled to canvas the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court."

(Emphasis supplied) [28] From the above it has been established that it not necessary that a challenge to the adverse findings of the lower court needs to be made in the form of a memorandum of cross-objection. In the present case, we note that the appellant had raised an objection to the jurisdiction of the Trial Court for entertaining the suit on the ground that an injunction and declaratory relief could not have been given. Although the Trial Court passed a decree in favour of the appellant, it had decided against the appellant on the question of jurisdiction. This finding was not challenged by the appellant before the High Court in the form of a memorandum of cross objection. The judgment of the High Court makes no mention that a plea of lack of jurisdiction was taken by either the appellant or the MDA. Before this Court, the appellant has not filed the counter affidavit it had filed before the High Court. Thus, the conclusion that emanates from the record before us is that the ground of jurisdiction was only raised Page 22 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined by the appellant before the Trial Court and not before the High Court. In effect then, this Court would have to adjudicate on a plea, which did not form a part of the decision of the High Court in challenge before us."

(emphasis supplied) 16.3 Thus, in view of the aforesaid position of law, according to me, the Appellate Court did not commit any serious error of law by interfering with the adverse finding recorded by trial Court against landlord in absence of cross- objection/cross-appeal. The judgements of Hon'ble Apex Court in the case of Vaibhav Jain (supra) and [Biswajit Sukul](#) (supra), cited by Mr. Shah, learned Senior Counsel, would not be applicable to the case at hand.

16.4 It may be true that road widening was carried out by AMC, thereby some portion of the suit premises gone in such road widening and to install new front shutter on the rented shops, the tenant might have erected an RCC pillar. At the same time, there is nothing on record to show that prior to erecting such pillar, any request was made to landlord and or any written consent obtained. Since the tenant has erected pillar and loft in the suit premises and undisputedly, the pillar was made of an RCC, such erection was without prior written consent of landlord, then considering the nature of such Page 23 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined construction, it would definitely amount to erection of permanent structure as per [Section 13\(1\)\(b\)](#) of Rent Act, and in that view of the matter, such an act of the tenant surely in breach of the condition No.6 of rent note executed between the parties.

17. Lastly, the defendant-tenant also objected that eviction suit was time-barred, inasmuch as the removal of common wall was in the year 1994, and the eviction suit was filed in the year 2009. It is undisputed that issue of limitation was not framed by the trial Court. One cannot dispute that the issue of limitation is mixed question of fact and law and requires to be proved by leading appropriate evidence. Yet, to prove this issue, the defendant failed to bring on record any cogent and reliable evidence to prove that the wall was removed in the year 1994.

17.1 The expert's evidence was obtained by the tenant to prove that the wall was removed in the year 1994. The expert was examined before the trial Court (Exhibit-130). As per his evidence, he only observed/noticed the depreciation of flooring and after saw the plaster on the wall and lime, he opined that in which year the common wall was removed. The expert Page 24 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined inspected the suit premises on 07.03.2018 that too in absence of landlord. No test of any kind was carried out by him to ascertain the age of flooring or a wall and without any test, he issued his expert opinion in the form of the report. He admitted that whatever history given by defendant was recorded in his report. He also categorically admitted in the cross-examination that he did not know that in which year there was a repair in the suit premises and wall was removed. He further admitted that flooring of suit premises was 20 years old and agreed that on what basis he opined such fact is not stated in the report. Finally, he also admitted that he did not mention the engineering principle upon which he prepared the report. 17.2 Prima facie, the expert examined by the defendant- tenant was not having first-hand knowledge about the removal of common wall in particular year except he gathered information from the defendant, and in absence of any test carried out to ascertain the year of flooring or plaster and lime used in the wall of the suit premises, he issued the report. He prepared the report as per his visual inspection. It would be unsafe to place reliance upon such report if it is to be considered as an expert report.

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NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined 17.3 Nonetheless, upon conjoint reading of his report and oral evidence, even if it is taken at its face value, according to the expert, who after seeing the depreciation of flooring, plaster and lime used on the retention wall of suit premises and as recorded above, the expert admitted that flooring is 20 years old prior to date of his inspection of suit premises, i.e., 07.03.2018. Furthermore, as per oral evidence of the defendant-tenant, while removing the wall, he also levelled the flooring of two shops. Thus, in such circumstances, even if this Court would readily accept the case of the defendant that the common wall between two rented shops was removed much prior to filing of the suit, then also, taking into account the said expert evidence as a whole, the wall was removed sometime in 1998, not 1994. If such is the case, as per [Article 66 of Limitation Act, 1963](#), the landlord can file the suit within 12 years from the breach of condition of rent agreement, i.e., the removal of the wall by tenant without written consent of landlord. Since the suit was filed in the year 2009, it was well within the period of 12 years.

17.4 The defendant appears to have examined other two witnesses than expert to prove his case. None of the witness Page 26 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on Thu Oct 01 2026 Downloaded on : Fri Oct 02 00:19:24 IST 2026 NEUTRAL CITATION C/CRA/290/2026 CAV JUDGMENT DATED: 01/10/2026 (GJHC240339672026) undefined inspired any confidence to the Courts below, inasmuch as none have produced anything on record to show that they are residing or doing business nearby to the suit premises. Even after going through their evidence, their evidence does not inspire any confidence to believe their version rather correctly discarded by the Courts below. The defendant could have easily examined the person doing business next to him, but reason best known to him, he did not examine any other tenant or a person having nearby shop to prove that the wall was removed in the year 1994.

17.5 Since the issue of limitation was neither framed nor was satisfactorily proved by the defendant before the Courts below, the Appellate Court has correctly observed that issue of limitation being mixed question of law and fact, no relief can be granted to defendant by declaring that the suit was time barred.

CONCLUSION:

18. Thus, in view of the foregoing reasons, I am of the considered view that the impugned judgment and eviction decree do not suffer from any jurisdictional error, and the findings of fact recorded by the Courts below do not suffer Page 27 of 28 Uploaded by DEEPAK GEHLOT(HC02361) on

19. Having reached the aforesaid conclusion, no interference is warranted by this Court while exercising its revisional jurisdiction. Accordingly, the present Revision Application is found devoid of merit and is rejected. Consequently, the judgment and decree passed by the Courts below are hereby confirmed.

20. Notice is discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs.

(MAULIK J.SHELAT,,J) Further Order After pronouncement of the judgment, Mr. Shah, learned Senior Advocate with Mr. Jenil Shah, learned advocate for the petitioner, would request this Court to suspend this judgment for some time as the petitioner is desirous to challenge it before the Hon'ble Apex Court.

Per contra, Mr. Patel, learned advocate appearing for the respondents, with reluctance would request this Court to leave it with the discretion of the Court.

Since the present revision application was filed by the tenant, who is also facing the execution proceedings, considering the peculiar facts and circumstances of the case, this judgment is suspended for a period of four weeks from today, subject to petitioner shall not create any third party interest in the suit property in any manner whatsoever.