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**(1994) 03 GUJ CK 0002**  
**In the Gujarat High Court**

Shantilal Lallubhai Pujara and Another APPELLANT  
Vs  
Kiritkumar Jayantilal Ghanacha and Another RESPONDENT

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**Date of Decision :** 19-03-1994

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A

**Citation :** (1995) 1 GLR 563

**Hon'ble Judges :** R.A. Mehta, J

**Bench :** Single Bench

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**Judgement**

R.A. Mehta, J.—The petitioners are the original defendants, the respondents are the original plaintiffs. The respondents have filed Civil Suit No. 51 of 1987 for declaration that the petitioners (Landlady) had no right to construct rooms over the terrace of the rented premises and also prayed for interim injunction.

2. The trial Court had presumed that the tenants were in lawful possession of the terrace and can be deemed to be in possession of the entire premises, including the terrace, and the suit terrace prima facie forms part and parcel of the premises leased to the tenant. The learned Appellate Judge came to the conclusion that there was absolutely no such prima facie evidence showing and suggesting that the suit terrace was part of the rented premises.

2.1. The suit premise consists of only ground floor structure and there is no upper storey.

3. It is also very important to note that earlier the landlord had filed a Civil Suit No. 44 of 1978 before the learned Judge (J.D.), Dhrangadhra, on the ground of reasonable and bona fide personal requirement. The requirement was held proved and the trial Court had passed a Decree for possession. However, the appellate Court reversed the decree for possession in Civil Appeal No. 193 of 1980. For doing so, the learned Appellate Judge observed that the tenant is entitled to make use of the terrace till the construction comes to be made by the landlord, and the landlord is entitled to make any construction on the terrace.

This judgment was rendered on 29-7-1983. Thereafter, the landlord prepared a plan for the pro-construction and got it sanctioned from the Municipality and obtained necessary permission for construction on the terrace.

4. Thus, when the landlord was to proceed with the construction, the tenant filed the present suit for injunction and has obtained a temporary injunction to restrain the landlord from carrying out the construction on the terrace.

5. The learned Appellate Judge while rightly disagreeing with the reasoning of the trial Court that the tenant prima facie was in possession of the terrace and prima facie the terrace was part of the leased premises, did not vacate the injunction on the ground that the landlord was required to make an application to the Court u/s 13-A of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947. Section 13-A of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 provides that "where the landlord proposes to make any improvement in, or construct any additional structure on, any building which (or part of which) has been let to a tenant, and the tenant refuses to allow the landlord to make the improvement or construct such additional structure, if the Court, on application made to it in this behalf by the landlord, is satisfied that such work will not cause undue hardship to the tenant, the Court may permit the landlord to do such work, and may make such other order as it thinks fit in the circumstances of the case." The learned Appellate Judge, therefore, held that under the provision of Section 13-A of Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, the landlord is entitled to make construction, if he obtains necessary permission from the Court for making appropriate construction.

6. A The learned Advocate for the petitioner submits that the Appellate Court has (failed to exercise jurisdiction vested in it by not granting the permission and not appreciating that the permission was already granted in earlier proceeding, when the Appellant Court reversed the decree for possession on the ground that the landlord can put up the additional structure on the terrace.

7. There is indeed considerable force in the contention raised by the learned Advocate for the petitioner-defendants. In fact, there is a judgment of this Court rendered in case of Dahyabhai Manchharam Bhandari and Another Vs. Ratilal Maganlal, . In that case (as also in the present case), the tenant had filed a suit for permanent injunction restraining the landlord from constructing additional structure on the premises in question and the High Court held that it was not necessary for the landlord to file or institute a separate proceeding u/s 13-A of the Rent Act against the tenant. It was further held that in a tenancy suit, it is open to the Court to adjudicate upon the substance of the matter and to find out whether an injunction should be granted or should not be granted or should be granted subject to conditions, and once the Court comes to the conclusion either in an application made u/s 13-A or on a Suit filed by the tenant that no "undue hardship" will be caused to the tenant, it is open to the Court to make an appropriate order which does not come in the way of the landlord constructing an additional structure.

8. In the present case, the controversy is practically concluded by the earlier proceeding filed by the landlord. The landlord had made out a case for eviction for his personal and bona fide requirement, however, the Appellate Court had reversed the decree for possession by observing that the landlord can put up additional structure on the terrace. It was on this basis that the tenant had succeeded in getting decree for possession reversed. Now to obstruct such additional structure, his refusal would be wholly unreasonable and illegal as there is no question of any hardship, much less undue hardship, to the tenant, if the additional structure is put on the terrace by the landlord. If any such permission is necessary, it could be granted to the landlord even in the suit filed by the tenant for injunction and the Court can and should legitimately refuse the injunction, even temporary. In the facts and circumstances of this case, it is unfortunate that the landlord who has been struggling for possession and construction of additional accommodation has not been able to get it for more than sixteen years inspite of the fact that tenant would not have any hardship and does not have to vacate the premises.

9. It is also unfortunate that the trial Court has not decided the suit of 1987 inspite of the directions by this Court in July, 1990 that it should proceed with the hearing and dispose it of on or before 31-12-1990 and while doing so it was also pointed out that as the case is covered by the judgments reported in (1975) 26 GLR 888 and Dahyabhai Manchharam Bhandari and Another Vs. Ratilal Maganlal, . It was in view of that direction that the interim relief was refused in the Revision Application. In spite of above direction, the trial Court has failed to dispose of the suit inspite of lapse of almost 4 years after this direction.

10. In the result, this revision application is allowed. Rule is made absolute by quashing the impugned orders of the trial Court and the appellate Court. Respondent -plaintiffs" application for interim relief Exh-5 is dismissed. The petitioners-landlords are granted permission to put the additional structure on the terrace of the premises in question. Rule is made absolute accordingly with cost quantified at Rs. 1,000/- (Rupees one thousand only). Cost to be paid within three months from the date of receipt of the writ by the trial Court, by depositing the same in the trial Court. Direct service permitted.