

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 149 OF 2015

SHRI. SUBHASH PAANDURANG
SATARDEKAR.

... Petitioner

Versus

SMT. PARVATI PANDURANG MADVAL @
USGAONKAR AND 4 ORS.,

... Respondents

Shri J. Godinho, Advocate for the petitioner.

Coram:- F. M. REIS, J.

Date:- 26th June, 2015

P.C.:

Heard Shri J. Godinho, learned Counsel appearing for the petitioner.

2. The above petition challenges an order dated 13/11/2014 passed by the learned District Judge-2, Panaji whereby an appeal preferred by the respondents challenging an order refusing to set aside an order dismissing eviction proceedings for default came to be allowed and the matter was ordered to be examined on merits.

3. Shri J. Godinho, learned Counsel appearing for the petitioner points out that the learned Lower Appellate Court has failed to examine that no application for condonation of delay was filed by the respondents which would entitle them to seek restoration of the eviction proceedings. The learned Counsel further points out that in terms of the Rules and the Rent Control Act, it is mandatory for a party to file an application for condonation of delay in case the application is not filed within the time prescribed. The learned

Counsel has taken me through the order passed by the Rent Controller to point out that the learned Rent Controller has, on the basis of the material on record, come to the conclusion that the respondents had not made out any sufficient cause. The learned Counsel has, thereafter, taken me through the Rozname of the Rent Controller and the order passed by the Administrative Tribunal to point out that there was no stay of the proceedings as sought to be contended by the respondents. The learned Counsel, as such, submits that the impugned order deserves to be quashed and set aside.

4. I have duly considered the submissions of the learned Counsel appearing for the petitioner and gone through the impugned order. The order impugned in the present petition is an order restoring the proceedings for eviction which were dismissed for default. The learned Lower Appellate Court, upon appreciating the evidence on record, has accepted the explanation of the respondents to the effect that the respondents were under an impression that in view of the revision preferred by the respondents before the Administrative Tribunal, the proceedings itself stood stayed. No doubt, on perusal of the order passed by the Administrative Tribunal, it reveals that only the operation of the order was ordered to be stayed. But, however, the explanation given by the respondents may be plausible considering that on perusal of the Roznama of the Rent Controller on 21st November, 2007, it would reveal that he has clearly recorded that the Administrative Tribunal has stayed the case. Considering that, the justification given by the respondents cannot be

said to be baseless. I find that there is no jurisdictional error committed by the learned Lower Appellate Court to pass the impugned order, restoring the eviction proceedings.

5. With regard to the contention raised by Shri J. Godinho, learned Counsel appearing for the petitioner that there was no separate application for condonation of delay, I find that on perusal of the averments in the application and considering the cause advanced by the respondents, such a technical objection cannot come in the way of doing substantial justice in restoring the proceedings based on the records of the Court. Apart from that, on perusal of the order passed by the learned Lower Appellate Court, it is seen that no such contention was advanced before the learned Lower Appellate Court. Hence, I find that no case is made out for interference in the impugned order, in exercise of jurisdiction under Article 227 of the Constitution, which has been passed to advance the cause of justice.

6. Needless to say, in case no reply is filed by the Petitioner, liberty to file such reply on the main petition at the request of the learned Counsel for the petitioner. The petition is, accordingly, dismissed.

F. M. REIS, J.

ssm.