

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 270 OF 2015

IN

WRIT PETITION NO. 109 OF 2015

AMIRA ABDUL RAZAQ AND 2 ORS.,

... Applicants

Versus

SMT. LILA S. MAHTANI.

... Respondent

Mr. J. Coelho Pereira, Senior Advocate with Mr. Somnath B. Karpe,
Advocate for the Applicants.

Mr. Premanand Anand Kholkar, Advocate for the Respondent.

Coram:- M. S. SANKLECHA, J.

Date:- 27th April, 2015

P.C:

By this application, the applicants seek to amend their petition. The petition filed challenges the order dated 27.06.2014 passed by the District Appellate Board. By the impugned order the petitioner's application under Section 32(4) of the Goa, Daman and Diu (Buildings, Lease and Eviction) Control Act, 1968 (the Act, for short) was rejected.

2. The petitioner's application before the District Appellate Board is under Section 32(4) of the Act, to stop all further proceedings and to direct the respondent to put the petitioners in possession of the suit premises. In its application the petitioners have inter alia relied upon the non deposit of rent by the respondent for the period from September, October and November, 2013. The impugned order, after

recording the petitioner's above grievance, inter alia accepts that the respondent was unable to deposit the rent for the period from September, October and November, 2013 in view of transfer of cases from the Administrative Tribunal to District Court.

3. Mr. J. Coelho Pereira, learned Senior Counsel in support submits that the present application for amendment seeks to bring on record the challenge to the impugned order on the ground that it has not dealt with the petitioner's grievance in respect of non depositing of rent for the period from September, October and November, 2013. The ground that the respondent neither made any attempt to pay nor deposited the rent for the period from September, October and November, 2013 taken in the proposed amendment was open to the petitioners when the petition was filed.

4. As against this, Mr. Kholkar, learned Counsel for respondent objects to the amendment being allowed. It is submitted that the impugned order has dealt with the issue of non deposit of rent for the period from September, October and November, 2013. Thus, the amendment now sought is not sustainable on merits.

5. The proposed amendment undisputedly could have been taken when the original petition was filed by the petitioners i.e. not dealing appropriately with the non deposit of rent by the respondent. According to the petitioners the non deposit of the rent is for the

period from September, October and November, 2013. The objection of the respondent is only that on merits the proposed amendment is not sustainable. However, at the stage of the amendment application, the merits of the proposed amendment is not a subject of consideration. The writ petition has not yet been admitted and the proposed averments made could have been taken when the petition was filed, as there is no reason to deny the petitioners their proposed application for amendment to the petition.

6. Accordingly, the amendment is allowed in terms of prayer clause (A). It is made clear that the merits of the amendment would be considered at the time the amended writ petition comes for consideration at the time of admission/final hearing of the petition.

7. Amendment to be carried out within one week. Respondent to file reply, if any, to the amended petition.

8. Petition to be on board on 15.06.2015.

M. S. SANKLECHA, J.

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