IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11344 OF 2014

M/s. Centronics .. Petitioner
vs.
The Goa Hindu Association & Ors. .. Respondents

Mr. Ashok Pande for Petitioner.
Mr. N. V. Moye for Respondent Nos. 1, 2, 5, 6, 8 to 14, 16 and 17.

CORAM : M. S. SONAK, J.
DATE: 27 OCTOBER 2015

P.C. :-

1] Rule. With the consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this Petition is to the order dated 23 August 2013, by which the Appeal Court has vacated the stay on the eviction decree on grounds of failure on the part of the Petitioner to comply with the term with regard to deposit of rent / compensation at the rate of Rs.2,200/- each month. There is no doubt that the Petitioner has committed a default. The Petitioner however, applied for leave to deposit the arrears and sought for condonation of delay. The application was styled as an application seeking condonation of delay in moving application for deposit of rent / arrears. The Appeal Court has rightly commented upon the novelty of the

request. Nevertheless it is quite clear that the Petitioner meant to seek condonation in the matter of deposit of arrears.

3] As of now, the arrears had mounted to Rs.1,25,400/-. Out of the same, the Petitioner in pursuance of interim direction of this Court, deposited an amount of Rs.1,00,000/- before the Trial Court. There is some lapse on the part of the Petitioner. However, if the stay is vacated, the Petitioner may have to suffer eviction, although, its Appeal against the eviction decree is pending before the Appeal Court. In such circumstances, the order vacating the stay is harsh.

4] No doubt, the landlord is bound to suffer prejudice. But the prejudice is of such nature as can be compensated by way of costs. The learned counsel for the Respondent - landlord has opposed the grant of any relief in this Petition. The learned counsel has pointed out that apart from failure to deposit the arrears, the Petitioner has not paid the permitted increases, taxes etc. A statement has been produced on record to indicate that an amount of Rs.99,541/- (approximately Rs.1,00,000/-) was due on this account in June 2015. The learned counsel for the Respondent - landlord has further pointed out that the taxes each month are in the range of Rs.800/-, which the Respondent - landlord is required to bear.

5] Taking into consideration all the aforesaid circumstances, as and by way of last opportunity, the Petitioner can be permitted to deposit the arrears and also effect certain additional payments, as indicated in this order, this shall however be subject to the Petitioner paying costs of Rs.25,000/- to the Respondent - landlord.

6] Accordingly, this petition is disposed of with the following order:

(A) The impugned order dated 23 August 2013 is set aside;

(B) The interim order made by the Appeal Court is restored subject to the condition that the amount of Rs.2,200/- which the Petitioner was required to deposit each month is enhanced to Rs.3,000/- per month. The enhancement shall be effective from 1 July 2015;

(C) The Petitioner shall within a period of four weeks from today, pay to the Respondent - landlord costs of Rs.25,000/- (Rupees Twenty Five Thousand). In case there is any dispute about acceptance of the costs, the Petitioner to deposit such costs before the Trial Court within a period of four weeks from today. Upon deposit, the Respondent - landlord shall be entitled to withdraw the same unconditionally;

(D) The Petitioner is further directed to pay or deposit the amount

of Rs.1,00,000/- (Rupees One Lakh) towards permitted increases, taxes etc. The Respondent - landlord shall be entitled to withdraw the said amount unconditionally, in case the same is deposited within four weeks from today.

(E) The Appeal Court is directed to dispose of Appeal No. 29 of 2011 in RAE Suit No. 93/161 of 2001 as expeditiously as possible and in any case within a period of six months from today. Both the parties to cooperate in the matter of expeditious disposal of the Appeal.

(F) In case the amount of costs of Rs.25,000/- (Rupees Twenty Five Thousand) and the further amount of Rs.1,00,000/- (Rupees One Lakh) towards permitted increases are not paid or deposited within a period of four weeks from today, the Petitioner shall not have the benefit of the present order. This Petition shall then be deemed to have been dismissed. However, the direction with regard to expeditious disposal of the Appeal shall stand.

(G) Rule is made absolute to the aforesaid extent.

(M. S. SONAK, J.)

Chandka