

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 920 OF 2016**

1. Shri Bhaskar D. Naik Karmali,
Major of age,
Businessman, Residing at
H.No.68, Bansai,
Cacora, P.O. Curchorem, Goa.
403 706.
2. Shri Laxmikant D. Naik Karmali,
Major of age, Civil Engineer,
Residing at H. No.709,
Near St. Joaquim Chapel, Borda,
P.O. Fatorda, Margao – Goa.
403 602.
3. Dr. Narendra D. Naik Karmali,
Medical Practitioner,
Presently residing at Chicago,
United States of America and
permanently residing at
H.No.68, Bansai, Cacora,
P.O. Curchorem – Goa,
403706.
Represented herein by his
Power of Attorney Holder
Petitioner No.1,
Shri Bhaskar D. Naik Karmali. ... Petitioners.

Versus

1. Smt. Kamalabai Shrirang Patil,
Residing at Flat No.4,
Building No.C-1,
Silver Gate Estate,
Aquem, Margao, Goa,
403601.

2. Shri Suhas Shrirang Patil,
Residing at Flat No.4,
Building No.C-1,
Silver Gate Estate, Aquem,
Margao – Goa 403 601.
 3. Shri Prakash Shrirang Patil,
Residing at Khaluli, Dabal, Goa.
Post Office Curchorem, Quirlapal
Branch Office, 403 706.
 4. Shri Gopal Shrirang Patil,
Residing at
Subhash Malkarnekhar's House,
Shivam, Opposite Costa
Grounds, Aquem, Margao –
Goa, 403 601.
 5. Shri Vishwas Shrirang Patil,
Residing at Flat No.F-2,
Maryanne Apartments,
Upper Bazaar,
Ponda, Goa. 403401
All are major age.
- ... Respondents.

Shri P. A. Kholkar, Advocate for the petitioners.

Shri C. A. Coutinho, Advocate for the respondent no.2.

CORAM : F. M. REIS, J

DATE : 9th December, 2016

ORAL JUDGMENT

The above petition takes exception to the first order dated 25.02.2016 as well as the second order dated 19.07.2016 passed by the

learned Principal District Judge, South Goa, Margao in Rent Appeal No. 1 of 2015 and as such prays for quashing of such orders.

2. Briefly, it is the contention of the petitioners that the petitioners' father executed a lease in favour of the husband of the respondent no.1 in respect of a front compartment of a go-down situated at Curchorem Goa, on a monthly rent of Rs.20/- to be paid by 5th of every succeeding month. As the respondents were irregular in the payment of such monthly rent from the date of their entry and as there was material alterations carried out in the premises in question, they ceased to occupy such premises for a continuous period of four months, the petitioners filed eviction proceedings on 12.02.2010 on such different grounds. As the respondents committed default during the pendency of the proceedings before the Rent Controller, the petitioners filed an application under Section 32(4) of the Goa Rent Act on the ground that the respondents have committed default in depositing the arrears of rent from April, 2011 to December, 2011. The respondents contested the said application and vide Judgment and Order dated 25.10.2012 the learned Rent Controller stopped further proceedings and directed the respondents to vacate and hand over the possession of the

subject premises to the petitioners. Being aggrieved by the said judgment, the respondents preferred an appeal before the Administrative Tribunal and also filed an application for condonation of delay. The learned Tribunal on 22.02.2013 directed to maintain status quo until further orders. It is further the contention of the petitioners that during the pendency of such appeal, the respondents again committed default in depositing the rents. It is the contention of the petitioners that the respondents deposited the rent for the period from April, 2011 to February, 2013 before the learned Administrative Tribunal and deposited the rent for the month of March, 2013 to April, 2013 on 05.04.2013. The respondents thereafter deposited the rent for the period from May, 2013 to July, 2013 on 25.04.2013. Thereafter, in view of the amendment to the Goa Rent Control Act, the said appeal was transmitted to the learned District Judge, South Goa, Margao. The application for condonation of delay filed by the respondents along with the appeal came to be registered before the learned District Judge. The learned District Judge vide order dated 05.01.2015 condoned the delay and ordered the Rent Appeal to be registered. Pursuant to the notice, the petitioners appeared on 15.06.2015 and filed an application for modification of an ex-parte order dated 22.02.2013 by which the

Administrative Tribunal granted status quo. The respondents filed an application before the Appellate Board for depositing the rent for the period from June, 2014 to August, 2014. The petitioners objected to the said application by filing a reply thereby pointing out that there is no provision which allowed belatedly to deposit the rent. The petitioners also filed an application under Section 32(4) of the Goa Rent Act on the ground that the respondents have failed to deposit the rent for the month of June, 2014 to August, 2014 during the pendency of appeal and as such the proceedings be stopped and the possession be delivered to the petitioners. The Appellate Board by judgment dated 25.02.2016 dismissed the application filed by the petitioners under Section 32(4) of the Goa Rent Act and by a subsequent order dated 19.07.2016, the Appellate Board permitted the respondents to deposit the outstanding rent from June, 2014 to August, 2014. Being aggrieved by the said order, the petitioners have filed the present petition.

3. Mr. Kholkar, learned counsel appearing for the petitioners has pointed out that it is obligatory of the respondents who are the tenants of the subject premises to deposit all the rent within the time stipulated in the Rent Control Act. It is further pointed out that

admittedly, the rents were not deposited from June, 2014 to August, 2014 and as such, the learned Appellate Board was not justified to refuse the relief sought by the petitioners under Section 32(4) of the Rent Control Act. The learned counsel further pointed out that it is well settled that it is obligatory on the part of the respondents (tenants) to comply with all the requirements of law in depositing the rent in case they seek protection under the Rent Control Act and having failed to deposit such rent without any justification, the petitioners are entitled for the relief under Section 32(4) of the Rent Control Act. In support of his submissions, the learned counsel has relied upon the judgment of the Apex Court reported in *(2003) 3 SCC 433* in the case of ***Balwant Singh and others V/s Anand Kumar Sharma & Others***, and judgment of this Court reported in *1995(3) Bom CR 283* in the case of Smt. ***Sumati K. Shirodkar V/s Miss Terezinha Serrao and others***.

4. On the other hand, Mr. C. A. Coutinho, learned counsel appearing for the respondents has submitted that the respondents are always depositing the rent in advance and on account of inadvertence, the rent remained to be deposited during the said period. It is further pointed out that even subsequent to the said period, the respondents

have deposited the rent which itself discloses the bonafides of the respondents (tenants). The learned counsel thereafter has taken me through the impugned order to point out that there is no illegality committed by the learned Appellate Authority while passing the impugned order which would call for interference of this Court in the present Writ Petition. In support of his submissions, the learned counsel has relied upon the judgment of this Court reported in **1989(2) Goa Law Times 313** in the case of **Roque Antonio Judas Tadeu Caetano Ribeiro V/s Angelo Cassiano Nevese Souza and others**. The learned counsel as such submits that the petition be rejected.

5. The Division Bench of this Court in the judgment in the case of **Roque Antonio Judas Tadeu Caetano Ribeiro** (supra) has observed at para 16 thus :

“16. The next question, however, is whether it is mandatory for the Rent Controller to stop all further proceedings and to direct the tenant to put the landlord in possession in case of every default on the part of the tenant. In our opinion, the answer must be in the negative. Section 32(4) while directing that the Controller or the appellate or revisional

authority shall stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building, if the tenant fails to pay or deposit the rent as mentioned in Section 32, further lays down that such an order shall be made “unless the tenant shows sufficient cause to the contrary”. That means that the tenant is entitled to satisfy the Court that circumstances exist in view of which the Court ought not to make an order under Sub-section (4) of Section 32 against him. If every default, however unintentional whether wilful or due to circumstances beyond the control of the tenant were to be a ground to make an order against him, then the provision giving the tenant an opportunity to show cause would become superfluous. Though the word “shall” is used in Sub-section (4), in the context of the tenant's right to show cause to the contrary, it must be read as “may” and as vesting discretion in the Rent Controller, the appellate and revisional authority, as the case may be, to make an order stopping all further proceedings and directing the tenant to put the landlord in possession of the building only after taking all the facts and circumstances into consideration. It is not mandatory for the Rent

Controller to put the landlord in possession under Section 32(4) no sooner than a default is committed by a tenant. While upon every default that landlord may apply for being put in possession, the tenant is entitled to show cause to the contrary and it is for the Court to consider whether the cause shown by the tenant is sufficient or not and whether the order prayed for by the landlord should be made or not. In exercising the discretion it is necessary for the Authorities under the Act to bear in mind the scheme of the Act. Under Section 22 the landlord is vested with the right to seek eviction if the tenant is in arrears of rent due by him for a total period of three months or more and has failed to pay or tender such arrears within thirty days of the receipt of a notice. But then, if the tenant pays or deposits that amount within thirty days of the service of the summons of proceedings on him, as laid down in Sub-section (3) of the Section 22, the landlord has no right to evict. If the Controller is satisfied that the tenant's default to pay or tender the rent has not been without reasonable cause, Sub-section (4) further empowers the Controller to give the tenant a reasonable time to pay or tender the rent due by him. In our

view, if eviction of a tenant can be sought under Section 22 only after giving such opportunity to pay arrears of rent, it could not have been the intention of the Legislature that for any and every default, however unintentional it may be to vest the landlord with an absolute and indefeasible right to seek eviction of the tenant and deny to the Rent Controller and the other Authorities under the Act the jurisdiction to consider whether there was any reasonable cause or not for such default. Not only having regard to the language of Section 32 and in particular Sub-section (4) of Section 32, but also having regard to the scheme of the Act, it must be held that the power vested in the Rent Controller and other authorities to stop proceedings and direct the tenant to put the landlord in possession of the building is directory and not mandatory. Some of the factors which would be relevant for exercising this power, would be whether the default is for a short period or for long period, whether the default is wilful or unintentional, whether the default is stray or persistent, whether payment was made at the earliest opportunity or after cantankerous contest, whether the default was bonafide or to harass

the landlord; in short what has to be found is whether in the facts and circumstances of the case there was reasonable cause for non-payment or deposit of rent within such time as is prescribed. In our view, the provision contained in Section 32(1) is intended to secure payment on pain of the tenant being precluded from contesting the proceedings and on being required to put the landlord in possession; it is not intended to serve as an order of eviction under Section 22. Section 32(4) vests a discretion in the Authorities constituted under the Act to make an appropriate order, taking into account all the facts and circumstances of the case. It is significant to note that the Act does not specifically vest any power in the Authorities to dismiss or allow the main petition for eviction; it only empowers them to stop the proceedings. No doubt, this is a provision to enforce payment of rent regularly during the pendency of the proceedings and to deny opportunity to the defaulting tenant to resist the proceedings for eviction. But keeping in view the fact that this provision is part of a beneficial legislation and considering it in the light of the scheme of the Act, we are unable to hold that the Legislature intended to make it

mandatory for the Court to put the landlord in possession no sooner than the tenant committed default wholly ignoring the circumstances in which it occurred. This Act being a beneficial legislation, an interpretation that advances the object of the Act compels us to take the view that in case of default in the payment or deposit of rent *pendente lite*, the Authorities constituted under the Act are not denied the discretion to make appropriate orders having regard to the facts and circumstances of the case. Section 32(4) is not mandatory but is directory.”

6. Taking note of the said observations, this Court has taken a view that the authorities have a discretion while examining an application under Section 32(4) of the Rent Control Act to grant the relief sought. The paramatives of exercising such discretion have also been substantially laid down in the said judgment. In the present case, the records reveal that in fact the respondents were depositing the rent from time to time during the pendency of the appeal in advance. Apart from that, the rents subsequent to the default in question have been deposited by the respondents within the time stipulated. In such circumstances, the discretion exercised by the Appellate Board in

dismissing the application under Section 32(4) of the Rent Control Act cannot be faulted. The Appellate Authority has noted that the respondents took steps to deposit the rent for the period in question only after the Advocate inspected the file of the Court and found that by inadvertence the rents for three months remained to be deposited. In such circumstances, as it was found that the conduct of the respondents was not contumacious in depositing the rent, I find that the question of interfering in the present Writ Petition under Article 227 of the Constitution of India would not at all be justified. I have only examined the matter in the context of the impugned order to consider the justification pleaded by the respondents with regard to the subject default from June, 2014 to August, 2014. Considering that the respondents had in fact committed a default and the respondents took steps to deposit such amount belatedly, I find that the petitioners are entitled for costs for such default which are quantified at Rs.10,000/-.

7. In view of the above, the petition stands rejected. However, the application filed by the respondent no.2 to deposit the arrears of rent is allowed subject to the payment of costs of Rs.10,000/- by the respondent no.2 (tenant) to the petitioners within two months from

today. Rule is disposed off accordingly.

F. M. REIS, J

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