

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.50 of 2014

Shri Baboo alias Surendra
Gadekar,

Major aged 60 years,
Resident of Khorlim, Mapusa,
Goa. .. Petitioner

Versus

1. Shri Jivottam Krishna Naik,
(since deceased) by his legal
representatives
2. Smt. Radhabai Jivottam Naik,
(expired) Thr. LR's Resp 3 and 5
(amended as per order dated
11/3/14.)
3. Shri Umesh Jivottam Naik,
4. Smt. Usha Umesh Naik,
5. Shri Mohan Jivottam Naik,
6. Smt. Merrra Mohan Naik,
7. Smt. Indu Shrikant Pai Angle,
8. Shri Shrikant J. Pai Angle,
9. Smt. Shubhangi Shamsundar Amonkar
10. Shri Shamsundar L. Amonkar

(Resp nos.7 to 10 are deleted
as per order dated 16/7/2015)

All major of age, residents of
Sastiwado, Bordem, Bicholim, Goa.

Mr. J. P. Mulgaonkar, Advocate for the petitioner.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the respondent nos.3 to 6.

CORAM :- C. V. BHADANG, J.

Reserved on : 23rd March, 2016.

Pronounced on : 8th June, 2016

JUDGMENT :

Rule. Rule made returnable forthwith. Learned Counsel for the respondents waives service. Heard finally with the consent of the parties.

2. By this petition, the petitioner, who is a tenant, is challenging the order dated 12/10/2004 passed by the learned Additional Deputy Collector and Rent Controller, Mapusa in Rent/MAP/7/1992, which has been confirmed by the learned District Judge vide judgment and order dated 20/12/2013 in Rent Appeal No.33/2013. As a result, the petitioner has been directed to be evicted, as being consistently in arrears of rent under Section 32(4) of the Goa Building (Lease, Rent and Eviction) Control Act, 1968 (the Rent Act, for short).

3. The brief facts are that, premises known as

'Adarsh Niwas', situated at Feira-Baixa, Mapusa, wherein the petitioner is conducting a bar and restaurant, are subject matter of dispute. The disputed premises were let out by now deceased Jivottam Naik to late father of the petitioner Shripad Atmaram Gadekar. After the death of Shripad, the landlord leased the suit premises to the petitioner on monthly rent of Rs.300/-. The original landlord as well as his wife Radhabai are dead. The respondent nos.3 and 5 are the sons of Jivottam while the respondent nos.4 and 6 are the daughters-in-law. Two daughters, namely Indu and Shubhangi of the deceased Jivottam and the sons-in-law being Shrikant Angale and Shamsundar Amonkar being the respondent nos.7 to 10 have been deleted. Thus, the only contesting respondents are respondent nos.3 to 6.

4. Initially, in the year 1985, eviction proceedings were filed against the petitioner under Section 22(2)(a) of the Rent Act on the ground that the petitioner was irregular in payment of rent and was in arrears. Admittedly, the said proceedings were dismissed on 21/01/1987 as the petitioner had cleared the entire arrears.

5. Thereafter, on 19/02/1992, again proceedings for eviction were filed against the petitioner under Section 22(2)(a) of the Rent Act i.e. on account of arrears of rent in excess of three months. This has been preceded by a demand notice dated 18/10/1991, calling upon the petitioner to clear the arrears of preceding 10 months amounting to Rs.3,000/-. In the said proceedings, an application under Section 32(4) of the Rent Act came to be filed on 16/03/2004, seeking stoppage of proceedings and the eviction of the petitioner. It was contended that as per the statement produced by the petitioner (the respondent before the Rent Controller), the petitioner was in arrears of an amount of Rs.31,200/- as on 10/10/2002 for the period from 1989 to 10/10/2002. It was contended that the petitioner has deposited an amount of Rs.900/- in the Savings Bank Account No.120952 in the name of deceased original landlord with Mapusa Urban Co-operative Bank and sent an amount of Rs.1,800/- to the widow of the original deceased landlord by money order. It was, thus, contended that after deducting the total amount of Rs.33,900/-, the petitioner was in arrears of

Rs.20,700/- as on 29/02/2004. It was contended that the petitioner has become an habitual defaulter, who had failed to deposit the rent as per Section 32 of the Rent Act read with Rule 7 of the Goa Building (Lease, Rent and Eviction) Control Rules, 1969 (the Rules, for short).

6. The petitioner filed a reply to the said application on 12/04/2004. It was contended that on 07/07/2003, the petitioner had sent Rs.900/- representing rent for the period from April, 2003 to June 2003, but the same was refused. Again, on 12/09/2003, the petitioner sent Rs.600/- which was also refused and thus, the petitioner was in arrears of rent from April, 2003 onwards. It was contended that on 30/10/2003, the petitioner sent Rs.900/- by money order for the period from April, 2003 to June, 2003. However, the same was again refused. On 12/01/2004, he has sent an amount of Rs.300/- for the month of July, 2003, which was refused. Thus, the petitioner could not pay the rent since April, 2003 to March, 2004 on account of refusal by the landlord to accept the same. In short, it was contended that the petitioner is not an habitual

defaulter.

7. The learned Rent Controller, by a detailed order, has allowed the application. In appeal, the learned District Judge has found that the petitioner had failed to deposit the rent in accordance with the provisions of Section 17 of the Rent Act read with Rule 7 of the Rules. It was found that the petitioner made an application on 12/04/2004 (i.e. on the same day on which, he filed a reply to the application under Section 32(4) of the Rent Act), with a request to allow him to deposit the rent. As per the rojnama dated 08/06/2004, the said application was allowed. However, the petitioner had failed to show that even this order was complied by making deposit. According to the learned District Judge (in para 29) "all these facts clearly show that the respondent has been in default of payment of rent during the pendency of proceedings for eviction and he has not shown sufficient cause, as to why the proceedings should not be stopped." In that view of the matter, the appeal came to be dismissed, which brings the petitioner to this Court.

8. I have heard Shri Mulgaonkar, the learned Counsel for the petitioner and Shri Usgaonkar, the learned Senior Counsel for the respondent nos.3 to 6.

9. It is submitted by the learned Counsel for the petitioner that Section 22 and Section 32 of the Rent Act, operate in different spheres and the considerations based on these two sections being independent, cannot be mixed together, as has been done by the Courts below. Reliance, in this regard, is placed on the decision of this Court in **Datta Anant Ghadi Vs. Guilhermina Silveira**, reported in 2000(1) Goa L.T. 39. It is next contended that Section 32(4) is not mandatory and it merely confers discretionary power on the Rent Controller, to direct stoppage of proceedings and consequent eviction, in appropriate case where it is found that there is persistent default without any sufficient or reasonable cause being made out by the tenant. It is, thus, submitted that it is not in every case that the Rent Controller is obliged to direct stoppage of proceedings and eviction. The learned Counsel would submit that the Courts below were in error in not considering this aspect. Thus, no case for

exercise of jurisdiction under Section 32(4) of the Rent Act is made out. The learned Counsel submitted that prior to filing of the application on 16/03/2004, there were two previous applications filed on 15/07/1994 (which was dismissed on 27/03/1996) and on 10/10/1996 (which was dismissed on 20/12/2002) and in the order dated 20/12/2002, it was held that the petitioner was not in arrears. It is submitted that finality would attach to these earlier orders and any arrears or default for the period, which was covered by these two applications, could not have been looked into. The learned Counsel submitted that the statement of the year 1989 could not have been relied upon and that there is no finding of willful default. It is submitted that no opportunity was granted to the petitioner and no enquiry as contemplated under Section 32(3) of the Rent Act was conducted, which would vitiate the impugned order. The learned Counsel has pointed out, provisions of Section 17 of the Rent Act, which prescribe the mode of payment of rent, in order to submit that the petitioner cannot be directed to be evicted under Section 32(4) of the Rent Act. In support of the various submissions, the learned Counsel has placed reliance on the decision of

this Court in the case of **Roque Antonio Judas Tadeu Caetano Ribeiro Vs Angelo Cassiano Neves E Souza**, reported in 1989(2) Goa Law Times (313), **Satyavijay Anna Tandel Vs. Administrative Tribunal of Goa, Daman and Diu**, reported in 1990(2) Goa L.T. 323 and **Joao Xavier Pinto Vs. Oswald J.C. Velho**, reported in 1990(1) Goa Law Times (116) and **Ranjit Satardekar Vs. Eufemio Azavedo**, reported in 2000(1) Goa L.T. 387.

10. On the contrary, it is submitted by the learned Senior Counsel for the respondents that Section 32(3) requiring an enquiry being conducted would come into play only where there is dispute about quantum of rent. He points out that in the present case, there is no dispute that the quantum of rent was Rs.300/- per month and as such, the ground based on absence of enquiry and the reliance placed on the decision of the case of **Ranjit Satardekar** (supra) would be misplaced. In so far as the ground about the absence or denial of opportunity is concerned, the learned Senior Counsel has pointed out the observations of the learned Rent Controller in para 6 of the impugned order. It is submitted that the petitioner was given an opportunity to file a detailed

statement showing the payment of rent and it was stated on behalf of the petitioner that he does not wish to file anything. It is thus, submitted that the ground about absence of an opportunity is without any basis. The learned Senior Counsel submitted that the Rent Act is a special legislation, which would override the general law and although it is a beneficial legislation enacted for a class of litigants namely, the tenants, such protection cannot be availed without complying with the obligations arising under the provisions of the said Act. It is, thus, submitted that in order to avail the protection/ privileges under the Rent Act, a tenant has corresponding responsibility to comply with the obligations also. Reliance is placed in this regard on the decision of the Hon'ble Apex Court in the case of **Balwant Singh and others vs. Anand Kumar Sharma and others**, reported in (2003)3 SCC 433 and **Atma Ram Vs. Shakuntala Rani**, reported in (2005)7 SCC 211. It is submitted that under Section 32, coupled with provisions of Section 17 of the Rent Act and Rule 7 of the Rules, the tenant can either pay to the landlord or deposit rent before the Rent Controller or Revisional or Appellate Court. It is submitted that under Section

17(3) of the Rent Act, the mode of payment by sending money order can be resorted to only if the landlord refuses to accept. It is submitted that the tenant has to adhere to the mode of payment as contemplated and envisaged under the Rent Act. It is submitted that during the pendency of the proceedings, the tenant cannot deposit the rent in the bank account or send it by money order and, therefore, the petitioner cannot place reliance on the deposit of the rent made in the bank account or the one sent by money order. The learned Senior Counsel pointed out that Section 32(4) of the Act is meant to deal with a tenant, who is habitual defaulter and indulges in consistent, cantankerous and contumacious conduct of not paying rent within time. It is submitted that in the earlier case filed in the year 1985, the petitioner/ tenant got over with the aid of Section 22(3) of the Act. In so far as the earlier two applications filed under Section 32(4) of the Act are concerned, it is pointed out that in the year 1994, the application was dismissed with a warning to the tenant while the second application of the year 1996 was dismissed as the rent was withdrawn. It is submitted that these orders cannot come in the way of the Court in

directing eviction if there is continuous, consistent default without any sufficient cause, which has been clearly made out in the present case. The learned Senior Counsel has placed reliance on the decision of this Court in **Chandrakant Govind Naik Vs. Sugenia Dias e Souza and others** reported in AIR 1982 Goa, Daman & Diu, in order to submit that remittance of rent by money order during the pendency of the eviction proceedings is not a method contemplated by Section 32 of the Rent Act. He, therefore, urged that the petition be dismissed.

11. I have given my anxious consideration to the rival circumstances and the submissions made.

12. At the outset, it is necessary to state that exercise of the supervisory jurisdiction under Article 227 of the Constitution of India is to ensure that the Courts and Tribunals below act "within the bounds of their authority." A petition under Article 227 of the Constitution of India cannot be converted into an appeal or revision in disguise, so as to reappreciate the material and the evidence on record and to come to a different conclusion. In that view of the matter, the

jurisdiction is circumscribed by well established principles in which the interference under Article 227 is called for and is justified. The legal position is no longer *res intengra* as it has been covered by several decisions of the Hon'ble Apex Court. In a recent decision in the case of ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil***, reported in 2010(8) SCC 329, the Hon'ble Apex Court has culled out the principles for such exercise of powers in para 49 of the judgment, which are as under :

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b)

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in

exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e)

and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it

must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised

just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

(emphasis supplied)"

13. It would now be necessary to examine the contentions raised on behalf of the petitioner. Undoubtedly, the provisions of Section 22 and Section 32 are distinct and operate in different fields. Section 22 sets out various grounds under which a landlord can seek eviction of the tenant. One of the grounds is that the tenant is in arrears of rent for a total period of 3 months. Section 32 provides for payment of rent during the pendency of proceedings for eviction. Subsection (1) of Section 32 mandates that no tenant against whom a proceedings for eviction has been instituted by a

landlord shall be entitled to contest the proceedings before the Controller or the Appellate or Revisional Authority unless the tenant pays to the landlord or deposits with the Controller or the Appellate or Revisional Authority, as the case may be, all arrears of rent upto the date of payment or deposit and continues to pay or deposit any rent, which may subsequently become due. Subsection (4) of Section 32 provides for the effect of non-compliance with subsection (1) of Section 32. Under subsection (4) of Section 32, a tenant, who fails to pay or deposit the rent as aforesaid and fails to show sufficient cause, the Controller or the Appellate or Revisional Authority can direct stoppage of proceedings, directing the tenant to put the landlord in possession of the tenanted premises.

In the case of **Joao Pinto** (supra), it has been held (vide para 17) that subsection (4) of Section 32 which provides for a cause being shown by the tenant is a cause not for the purpose of failure to pay, but for the purpose of stopping or not of further proceedings and making an order, directing the tenant to put the landlord in possession.

14. A perusal of the order passed by the learned Rent Controller indeed shows that the Rent Controller has considered the provisions of Section 22 along with Section 32 of the Rent Act. The contention raised on behalf of the petitioner is that these two provisions being distinct, no reference could have been made to Section 22 of the Act. I would tend to disagree. Mere setting out of the provisions of Section 22 and discussion about the nature of the said provisions cannot vitiate the order. A perusal of the order passed by the Rent Controller from para 8 onwards would clearly show that the learned Rent Controller had adverted to Section 32 read with rule 7 of the Rules, independently and without taking any colour from Section 22 of the Act. Thus, reference to Section 22 and discussion thereunder in para 7, in my considered view, will not be sufficient to hold that the impugned order is vitiated.

15. Next contention raised is about failure to hold enquiry under Section 32(3) and/or the consequential failure to observe the principles of natural justice. Here again, the contention raised on behalf of the

petitioner cannot be accepted. Subsection (3) of Section 32 envisages a dispute as to the amount of rent to be paid or deposited under subsection (1). In this regard, it is pertinent to note that the learned Rent Controller has observed in para 6 of the impugned order that on 05/08/2004, the petitioner was directed to file a detailed statement showing the payment of rent, when it was intimated that the petitioner does not wish to file anything. It is not in dispute that the monthly rent was Rs.300/- payable by the petitioner. Normally, when it is found that there was absence of proper opportunity and consequent failure to follow the principles of natural justice, the matter would be remanded for fresh enquiry and decision. This is subject to the exception when on admitted/ undisputed facts, no different conclusion is possible and thus the remand would be an exercise in futility. In the present case, I find that there is no failure to afford opportunity and even otherwise no different conclusion on facts is competent. That apart, a perusal of the reply filed by the petitioner to the application, under Section 32(4) of the Rent Act would clearly show that whatever payments were made were matters of record and

the learned Rent Controller has proceeded to consider these payments and has then come to the conclusion about a case of exercise of powers under Section 32(4) of the Rent Act being made out. Thus, there was hardly anything to enquire as such.

16. It is next contended that the earlier two applications filed by the respondent/ landlord under Section 32(4) were not favourably considered and as such, the third application could not have been allowed. In reply, it is contended on behalf of the respondent/ landlord that the first application filed in the year 1994 was dismissed with warning while the second application in the year 1996, which was decided in the year 2002, was dismissed as the rent was withdrawn. It can be seen that in spite of these two applications, the petitioner has further defaulted the payment of rent, which would, in fact, strengthen the case of the respondents about the petitioner being an habitual defaulter and the default not being inadvertent, casual or stray default.

17. Section 18(1) of the Rent Act, *inter alia*,

provides that where the landlord refuses to accept the rent from the tenant, the tenant may deposit such rent with the Controller in the prescribed manner. Rule 7 of the Rules, which has to be read along with Section 32 of the Act provides that the tenant against whom proceedings for eviction has been instituted by a landlord under the Rent Act, shall deposit all arrears of rent due in respect of the building, within one month from the date on which notice is served on him for the first time about the said proceedings before the Controller or before the Appellate or Revisional Authority, as the case may be. In so far as subsequent rent is concerned, subrule (2) of Rule 7 provides that the tenant shall deposit the rent which may subsequently become due within 15 days from the day on which such rent becomes payable.

18. In the case of **Balwant Singh** and **Atma Ram** (supra), the Hon'ble Apex Court has considered its earlier decision in the case of **E. Palanisamy Vs. Palanisamy**, reported in 2003(1)SCC 123. The following observations in **E. Palanisamy** (supra) may be reproduced as under :

"18. In *E. Palanisamy V. Palanisamy*, the provisions of the T.N. Buildings (Lease and Rent Control) Act, 1960 came up for consideration. The requirement of the Act was somewhat similar to the Rajasthan Rent Act and the A.P. Rent Act considered by this Court in *Kuldeep Singh V. Ganpat Lal and M. Bhaskar V. J. Venkatarama Naidu*. Reiterating the view in *Kuldeep Singh V. Ganpat Lal and M. Bhaskar V. J. Venkatarama Naidu*, this Court observed : (SCC pp 127 & 128, paras 5 & 8)

"The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot

straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in Kuldeep Singh V. Ganpat Lal & Another, reported in 1996 (1) SCC 243 and M.Bhaskar v. J. Venkatarama Naidu reported in 1996 (6) SCC 228."

Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. Sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference."

19. In the case of **Chandrakant Naik** (supra), this

Court has held that remittance of rent by money order is not one of the modes contemplated by Section 32 of the said Act.

20. The Rent Controller has considered the various payments made towards rent and the period for which they are made after tabulating the same. For the limited purpose, it would be worthwhile to set out the payments made after 2002 (assuming for the moment that earlier defaults cannot be acted upon as the earlier two applications were not favourably considered.) The payments from October 2002 onwards are as under :

Period for making payment of rent.	Amount of rent paid	Mode of payment	Date on which rent paid
October, 2002	Rs.300/-	In the Mapusa Urban Bank account of the Landlord.	07/11/2002
November, 2002	Rs.300/-	In the Mapusa Urban Bank account of the Landlord.	05/12/2002
December, 2002	Rs.300/-	In the Mapusa Urban Bank account of the Landlord.	07/01/2003
January, 2003 February, 2003 March, 2003	Rs.900/-	Paid via money order to the wife of the deceased landlord.	01/05/2003
April, 2003	Rs.900/-	Paid via money	08/07/2003

May, 2003 June, 2003		order to the wife of the deceased landlord.	
July, 2003 to February, 2004	<u>Rs.2400/- not paid at all to the landlord</u>		

Note : Payment of Rs.31,200/- is paid from the period commencing from 1/01/1989 till 10/10/2002.

21. It would also be significant to note that the application to deposit the rent was filed by the petitioner on 12/04/2004 i.e. after the filing of the application under Section 32(4) of the Rent Act and both the Courts have concurrently found that notwithstanding the order dated 08/06/2004, no proof about the payment/ deposit or compliance with the said order was produced. As noticed earlier, the payment/ deposit in the bank or remittance by money order can also not be considered as a proper mode of payment/ deposit as envisaged under Section 32 of the Rent Act.

22. In the case of **Ranjit Satardekar** (supra), a perusal of para 5 of the judgment would show that the petitioner tenant had filed application for seeking leave to deposit the arrears of rent within the prescribed period and although the petitioner had not

deposited the entire arrears and had sought leave to deposit an amount of Rs.7,600/-, had simultaneously prayed for necessary enquiry under Section 32(3) of the Act in relation to the balance amount of Rs.7,600/- from August, 1978 to February, 1980.

In the present case, the application was allowed on 08/06/2004 and the Courts below have found that there was non-compliance with the said order.

23. In the case of **Satyavijay Tandel** (supra), it has been held that Section 32(4) of the Act has to be resorted to sparingly as the provision applicable is in terrorem. A perusal of para 7 of the judgment would clearly show that there was a delay of 9 days in deposit of the amount of rent in respect of March, 1984 and except this, there was no other material. It was contended before the Rent Controller that the tenant had not explained the said delay in deposit of the amount. That was held to be not acceptable in as much as before the application was made, the tenant was permitted to deposit the full rent then due and as such, there was no question of showing any sufficient cause for the delay as such. On facts, it was found that delay for a period

of 9 days should have been condoned by the Rent Controller as the object of the law was to do justice to both parties by compelling the defaulted tenant to deposit rent from time to time with the aid of a threat of summary eviction. It can, thus, be seen that the said case turned on its own facts. A clear distinction has to be made between a singular or an occasional default, which may be either inadvertent, casual or stray default and the conduct which shows consistent and persistent default of contumacious nature.

24. Lastly, in **Roque Ribeiro** (supra), it has been held that the provisions of Section 32(4) are not mandatory and is a directory provision. It can, thus, be seen that Section 32(4) confers a discretion on the Rent Controller, which is albeit a judicial discretion to be exercised on the objective facts and circumstances to direct stoppage of proceedings and consequent eviction of tenant. Normally, in the absence of it being demonstrated that the exercise of such discretion is arbitrary or capricious, this Court in exercise of its supervisory jurisdiction would be slow to interfere with the same. On a careful consideration of the order

passed by the learned Rent Controller, which has been affirmed by the learned District Judge, I am unable to hold that the impugned order exhibits any jurisdictional error and/or exercise of discretion, which can be labelled as arbitrary or capricious. Thus, no interference is called for and in the result, the Writ Petition is hereby dismissed.

25. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

SMA