

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.269 OF 2016**

1. Mr. Otto Jaime Hamilton
P. De Souza, son of late
Antonio Serafin De Souza,
81 years old, married,
retired, and his wife,
2. Mrs. Diana Rosa
V.E. De Souza, wife of
Otto Jaime Hamilton P.
De Souza, 78 years old.
Both residing at Gemini,
Plot D-2, La Campala Road,
Miramar, Panaji, Goa.Petitioners

V/s

Mr. Prabakar Moraskar,
r/o. House No.E-38,
Bhatulem, Panaji, Goa.Respondent

Shri J.E. Coelho Pereira, Senior Advocate with
Shri V. Korgaonkar, Advocate for the
Petitioners.
Shri J.J. Mulgaonkar, Advocate for the
Respondent.

CORAM : C.V. BHADANG, J.

DATE : 29th SEPTEMBER, 2016

ORAL JUDGMENT :

Rule made returnable forthwith. The learned
Counsel for the respondent waives service.
Heard finally by consent of the parties.

2. The petitioners are the landlords while the respondent is the tenant. The petitioners are challenging the order dated 4/01/2016 passed by the learned Adhoc District Judge at Panaji in Rent Appeal No.13/2015. By the impugned judgment, the learned District Judge has remanded the application filed by the respondent under Section 18 of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act (the Act, for short) for deciding it afresh, in accordance with law.

3. The brief facts are that the petitioners have filed proceedings for eviction against the respondent under Section 22(2)(f) & 23(3-B) of the Act i.e. on the ground of non user of the premises and personal occupation. In the said proceedings, the petitioners have filed an application under Section 32(1) of the Act for deposit of the rent, while the respondent has filed application under Section 32(4) of the Act, for stoppage of proceedings, which are both

pending before the Rent Controller. After entering appearance in the eviction proceedings, the respondent filed independent proceedings under Section 18 of the Act, for deposit of the rent, inter alia, on the ground that the petitioners have refused to accept the rent. The learned Rent Controller by an order dated 8/05/2015 had dismissed the application as not maintainable. The learned Rent Controller found that once eviction proceedings are filed by the landlord the tenant is required to file an application for deposit of rent under Section 32(1) and not under Section 18 of the Act. The respondent challenged the order of the Rent Controller in appeal before the learned District Judge. The learned District Judge framed a solitary point as to whether the application under Section 18 of the Act, is independent of Section 32 of the said Act and whether such application could be filed even after the eviction proceedings are initiated. The learned District Judge has answered the said point in

the affirmative and has thus allowed the appeal remitting the application under Section 18 back to the Rent Controller. Feeling aggrieved, the petitioners are before this Court.

4. I have heard Shri J.E. Coelho Pereira, the learned Senior Counsel for the petitioners and Shri J.J. Mulgaonkar, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties I have perused the order passed by the Rent Controller and the Judgment in appeal.

5. It is submitted by Shri Pereira, the learned Senior Counsel for the petitioners that the appellate Court had framed a wrong point. It is submitted that the real issue was whether the application under Section 18 could have been entertained. The learned Senior Counsel has pointed out that once the respondent has filed an application under Section 32(1) of the Act, in which the petitioner is claiming stoppage of

proceedings under Section 32(4) of the Act, no purpose would be served by continuing to entertain the application under Section 18 of the Act. It is submitted that the learned Rent Controller had rightly considered this aspect and had dismissed the application as not maintainable. It is submitted that the appellate Court had wrongly interfered with the said findings.

6. On the contrary, it is submitted by the learned Counsel for the respondent that the object, purpose and the parameters within which Section 18 and Section 32 operate are different. It is submitted that, one cannot govern the other and they have rightly been held to be independent proceedings. It is submitted that there is nothing in the Act to show that Section 32 controls or governs application under Section 18 of the Act. It is submitted that in any event the impugned order does not result into any manifest injustice, as all that the

appellate Court has done is to remand the application in which the petitioner shall get an opportunity to defend the same. He, therefore, submits that the petition is without any merit.

7. I have carefully considered the circumstances and the submissions made. Under Section 32 of the Act, a tenant is required to deposit the arrears of rent and has to continue to pay or deposit the rent as a condition precedent to enable the tenant to contest the proceedings. A conjoint reading of Section 32(2) of the Act and Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Rules, 1969, would show that such a deposit has to be made within a period of one month from the date on which the notice is served on the tenant for the first time. Under Section 32(4) of the Act, a landlord can apply for stoppage of proceedings or a direction to the tenant to put the landlord in possession of the building, if the tenant fails to deposit the

rent without sufficient cause. It can thus be seen that under sub-section 4 of Section 32, the tenant can in a given case show that he had sufficient cause for not paying the rent. It is thus clear that Section 32 read as a whole operates in a different sphere.

8. Section 18 of the Act provides for deposit of rent by the tenant in three distinct contingencies, namely; (i) where there is a bonafide doubt as to the person or persons to whom the rent is payable or (ii) where the address of the landlord or his authorised agent is not known to the tenant and (iii) where the landlord refuses to accept the rent from the tenant. For the present, we are not concerned with the first two contingencies. A perusal of para 4 of the application under Section 18 filed by the respondent, the respondent was unable to pay the rent since April 2009 because the petitioner had allegedly closed his saving account with the State Bank of India and had not

furnished the details of any other account nor has accepted the monthly rent. It can thus be seen that in the application under Section 18, the respondent is claiming that there is refusal to accept the rent. It is neither necessary nor permissible at this stage to go into the merits of such claim. The only question is whether on account of an application under Section 32(1) (filed by the respondent) and an application filed under Section 32(4) (filed by the petitioners) which are pending, the respondent can be precluded from filing an application under Section 18. In my considered view, as rightly submitted on behalf of the respondent, the object, purpose and the scope of Section 32 and Section 18 are different. At any rate, there is nothing to show that once the landlord files an application under Section 32(4) the tenant would be precluded from filing an application under Section 18. In that view of the matter, I do not find that there is any infirmity in the order passed by the learned

District Judge. At any rate, the petitioner had not demonstrated any manifest injustice resulting from the impugned order as the petitioner would get an opportunity to contest the application under Section 18.

9. In that view of the mater, I do not find that any case for interference is made out. In the result, the Writ Petition is dismissed. Needless to mention that it would be open for the Rent Controller to consider the application under Section 18 along with application under Section 32(1) and 32(4) which are pending for consideration. Rule is accordingly discharged, with no order as to costs.

C.V. BHADANG, J.

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