

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

CIVIL APPLICATION (REVIEW) NO.12 OF 2016

1. Shri Joel Avelino Noronha
Major of age, businessman,
R/o H. No. 411/A-11,
Panzorconi, Cuncolim,
Carrying on business,
At Yohan Pharmacy,
Miranda Building,
Luis Miranda Road,
Margao-Goa.
 2. Shri Assuncao Teodosio
Serafino Fernandes,
C/O Ratnadeep Bar,
Costa Pereria Building,
Municipal Square,
Margao-Goa.
Through his power of attorney holder
Mr. Neville B. Furtado,
Major, r/o Copelvaddo, Sernabatim,
Salcete, Goa.
- Applicants

V e r s u s

1. Shri Francisco Xavier,
Estanislau Miranda,
Major of age, Businessman.
2. Shri Recardo Lucio Fernando Miranda,
Major of age, businessman,
3. Shri Denzil Frederico Miranda,
Major of age, businessman,
All with address at C/o Miranda Buidling,
Luis Miranda Road,
Margao-Goa.

Shri Nigel Da Costa Frias, Advocate for the Petitioners.

Shri R. G. Ramani, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 16th June, 2016.

ORAL ORDER:

Heard the learned counsel for the applicants and the learned counsel for the respondents. This is an application for review of the judgment dated 17/2/2016 passed by this Court in Writ Petition No.793 of 2015. By the aforesaid judgment, this Court has confirmed the order passed by the learned District Judge directing stoppage of the proceedings and eviction of the petitioners/tenants under section 32 (4) of the Goa Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act of short).

2. The learned counsel for the petitioners has pointed out that an application was filed by the petitioners in October 2014 for deposit of rent for August, September and October 2014. It is contended that this application remained pending and no orders were passed on the same. Subsequently another application was filed in the year 2015 seeking deposit of rent from October 2014 onwards which was decided by the learned District Judge on 1/7/2015. It is contended that inadvertently the fact about pendency of the earlier application filed in October 2014 was not mentioned in the subsequent application filed in June 2015. It is next contended that although this Court has observed that the District Judge has found the conduct of the petitioners to be cantankerous and contumacious, there is no finding recorded by the

learned District Judge to that effect. Thirdly the learned counsel has pointed out the decision of this Court in **Satyavijay Anna Tandel Vs. Administrative Tribunal of Goa, Daman & Diu** reported in 1990 (2) Goa L.T. 323 and in particular para 7 thereof, in order to contend that the provisions of section 32(4) of the Act are to be resorted to sparingly and the provision is not intended for eviction of the tenant but to ensure the regular deposit of the rent by the tenant. Lastly the learned counsel has placed reliance on the Division Bench decision of this Court in **Dinkar s/o Kisanrao Warade Vs. Gajanan Prasad Sahakari Gruth Taran Sanstha and others** reported in 2014 (4) MLJ 299 in order to point out the scope and ambit of the powers available in an application for review of the present nature.

3. The learned counsel for the respondents states that in this case an application under section 32(4) was filed before the Rent Controller, which had given rise to an appeal before the learned District Judge, in which another application under section 32(4) was filed by the petitioners which has been allowed. The learned counsel points out that the learned District Judge has found that the petitioners were habitual in making default and had not shown sufficient cause. It is submitted that this Court has considered all the relevant aspects and there is no error apparent on the face of the record.

4. I have considered the circumstances and the submissions

made. Under section 32(4) of the Act if any tenant fails to pay or to deposit the rent, the Controller or the appellate or revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and can make an order directing the tenant to put the landlord in possession of the tenanted premises. In the present case a perusal of the order passed by the learned District Judge in para 19 and 20 clearly shows that it has been held that this was a classic case of the tenant having made persistent default in deposit of the rent and it has also been held that the tenant has not made out any sufficient cause for, withholding the order under section 32(4) of the Act.

5. Thus, there is a finding recorded by the learned District Judge as is required under section 32(4) of the Act which has been confirmed by this Court. Even the aspect of the pendency of the earlier application filed in October 2014 and the non mention of its pendency in the subsequent application filed on 15/6/2013 has been considered by this Court in its judgment. It is now well settled that a review application cannot be considered as an appeal in disguise. The law laid down by this Court in the Division Bench judgment in the case of **Dinkar Warade (supra)** is a reiteration of the well established principles governing the jurisdiction of review. In the case of **Satyavijay A. Tandel (supra)**, the case clearly turned on its own facts, as there was a single default, in which the delay of deposit was of

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only 9 days. Considering the overall circumstances, I am unable to hold that there is any error apparent on the face of the record. In the result the review application is dismissed.

C. V. BHADANG, J.

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