

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.400 of 2016

Shri Shashikant B. Karbotkar,
Son of late Rama Karbotkar,
70 years of age,
c/o bar Suresh & Restaurant,
Shop No.4, Susheela Building,
18th June Road Panaji. .. Petitioner

V/s

Shri Sunilkumar A. Naik,
Son of Atmaram Naik,
Businessman, Married,
r/o Panaji Goa. .. Respondents

Mr. Nigel Da Costa Frias, Advocate for the petitioner.

Mr. Sudin Usgaonkar, Senior Advocate with Ms. V. Palyekar, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 15th June, 2016

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The only contention raised on behalf of the petitioner is that the learned Appellate Board could not have decided the appeal on merits in view of absence on

behalf of the petitioner. Reliance is placed on behalf of the petitioner on Explanation to Rule 17(1) of Order XLI of the Code of Civil Procedure read with Rule 9 of Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 in order to submit that such a course of action could not have been followed.

3. The learned Senior Counsel appearing for the respondent, in all fairness, does not dispute this position. Hence, by consent, the following order is passed :

(i) The petition is allowed.

(ii) The impugned judgment and order dated 13/08/2015 is hereby set aside.

(iii) Rent Appeal No.11/2013 is restored back to the file of the learned Appellate Board for deciding the same afresh, in accordance with law.

(iv) The parties to appear before the Appellate Board on 28/06/2016 at 2.30 p.m.

(v) The rival contentions of the parties are

left open.

(vi) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA