

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.408 OF 2009**

1. Mrs. Arti Sitaram Naik @
Sunita Sudarshan Shenoy,
d/o. Shri Sitaram Naik, major.
2. Shri Mahesh Sitaram Naik,
3. Shri Sudarshan Ramrai
Shenoy, s/o. Shri Ramrai
Shenoy, major.
All r/at flat no.F-4,
1st Floor, Prajabta Apts.,
Sirvodem, Navelim,
Salcete, Goa.Petitioners

V/s

Sociadade Verlekar through
its Administrator Shri
Roulu Anant Verlekar,
Sociadade Verlekar Building,
New Market, Margao.Respondent

Shri Nitin Sardessai, Senior Advocate with Shri
L. Raghunandan, Advocate for the Petitioners.
Shri I. Agha, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

Reserved on : 24th JUNE, 2016
Pronounced on :18th JULY, 2016

JUDGMENT :

The petitioners challenge the judgment and
order dated 9/06/2009 passed by the
Administrative Tribunal, Goa in Eviction Appeal

No.236/2000. By the impugned judgment the Administrative Tribunal, has set aside the order dated 28/09/2000 passed by the additional Rent Controller, Margao and the petitioners are directed to hand over vacant possession of the tenanted premises to the respondent.

2. The facts necessary for the disposal of the petition may be stated thus:

That the respondent filed eviction proceedings against now deceased Sitaram Naik for eviction from the suit shop, on the ground of non-payment of rent for the period from June 1979 till the filing of the application i.e. 10/07/1980.

3. It appears that within thirty days of the service of the summons, the petitioners deposited the entire arrears of the rent on 10/07/1980. The petitioners also filed a written statement on 31/07/1980 contesting the application.

4. On the basis of the rival contentions the learned Rent Controller framed the following issues :

- 1 Whether the applicant proves that the respondent is in arrears of rent from June, 1979.
- 2 Whether the respondent proves that the applicant refused to accept the rent and that he has sent the rent by money order regularly.
- 3 Whether the respondent proves that the applicant filed vexatious proceedings.

On behalf of the respondent one Anant Verlekar was examined. Now deceased Sitaram Naik (the original respondent) examined himself. In his deposition he claimed that the entire rent due was paid. It was contended that the rent was being paid through the Administrator of the Society by name Shankar Verlekar.

5. Eventually, the learned Rent Controller recorded the following findings:

(i) That the original respondent/tenant could not prove that he had paid the rent for the period from June, 1979 till the date of the filing of the application, as contended by him;

(ii) The respondent/tenant could not prove that the original applicant/landlord had refused to accept the rent and that the application was vexatious. Thus, the learned Rent Controller answered the issue no.1 in the affirmative and the issue nos. 2 & 3 in the negative. However, the learned Rent Controller found that as the original respondent/tenant had deposited all the rent up to date as on 10/07/1980 which was "well within 30 days from the receipt of the first notice" as required under section 22(3) of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act for short) he cannot be evicted. In so far as the requirement of Section 22(3) for the deposit of costs is concerned, the learned Rent Controller found that the costs are not prescribed by law and the same have to be determined by the Rent

Controller and found that if the costs are determined the same would "suffice in the interest of justice". The learned Rent Controller fixed the costs of Rs.500/- and eventually passed the following order:

"The application of the applicant dated 6/06/1980 is hereby dismissed. However, the respondent shall pay cost of Rs.500/- to the applicant within 30 days of the present order."

6. This was challenged by the respondent herein (landlord) before the Administrative Tribunal. The Administrative Tribunal came to the conclusion that there was no application filed by the tenant under Section 22(4) which was there on record. It was found that under Section 22 the tenant gets in all three opportunities, one prior to the institution of the proceedings and two thereafter. It was found that the Rent Controller had Suo Motu considered the deposit of the arrears of the rent as being made under section 22(3) of the

Act. The Administrative Tribunal found that the tenant was specific about contesting the matter, which intention is clear from the application to deposit the rent and if at all the tenant wanted to get out of the eviction proceedings "as per the opportunity available under section 22(3)" he would not have contested the proceedings. In such circumstances, the Administrative Tribunal came to the conclusion that the Rent Controller could not have taken recourse to Section 22(3) at the fag end of the case, after a lengthy contest, form the year 1980. In such circumstances, the appeal came to be allowed. Feeling aggrieved, the petitioners are before this Court.

7. I have heard Shri Sardessai, the learned Senior Counsel for the petitioners and Shri Agha, the learned Counsel for the respondent.

8. It is submitted by the learned Senior Counsel for the petitioners that Section 22

contemplates in all three opportunities to the tenant to pay all the arrears of rent. The first opportunity is after issuance of a notice i.e. prior to the initiation of the proceedings while there are two opportunities during the pendency of an application under Section 22(1) (a) of the Act. Thus the second opportunity is under Section 22(3) while the third is under Section 22(4) of the Act. The learned Senior Counsel submits that under Sub-section 3 of Section 22 the benefit of the said section can be given at any stage of the proceedings. The only rider is that a tenant cannot avail of the benefit of Section 22(3), twice. The learned Senior Counsel submits that this is not a case wherein the petitioners have availed of the opportunity twice. The learned Senior Counsel submitted that the original deceased tenant had filed an application within 30 days of the service of the summons and the amount of the arrears of rent was also deposited. He submits that although Section 22(3) of the Act

contemplates deposit of costs together with such arrears, the costs are not provided for or quantified in the Act. He thus submits that unless and until the Rent Controller decides the costs, the same cannot be deposited by the tenant. He submits that the Rent Controller had determined the costs in his judgment dated 28/09/2000 which have been deposited. Thus nothing prevented the Rent Controller from giving the benefit of Section 22(3) of the Act which was rightly extended. The learned Senior Counsel has submitted that the Administrative Tribunal was in error in interfering with the said order.

9. The learned Senior Counsel has pointed out the difference in the phraseology used in Section 22(3) and Section 22(4) in order to submit that under Section 22(3) no order for eviction of a tenant shall be made on the ground specified in clause (a) of Sub-section (2) if the tenant within 30 days of the service of the

proceedings, pays or tenders to the landlord or deposits the arrears of rent together with the costs of application. Under Sub-section 4 an inquiry is contemplated whether such default on the part of the tenant to pay, tender or deposit the rent was, with or without a reasonable cause. The learned Senior Counsel submits that while under Section 22(4) of the Act, once the Rent Controller is satisfied that such default by the tenant was not without reasonable cause, the Rent Controller would grant a reasonable time to pay, tender or deposit the arrears, whereupon the application filed by the landlord shall be rejected. He submits that once the Rent Controller finds that the default was not without reasonable cause and the tenant pays within the time granted, the proceedings are brought to an end, which is not the case under Sub-section 3 of Section 22 where under according to the learned Senior Counsel the proceedings would continue and it will be open for the tenant to show that inspite of an

attempt by the tenant to pay or tender the rent, the landlord had refused to accept the same. The reason being that the opportunity under Sub-section (3) of Section 22 cannot be availed twice. In short, it is submitted that it will be open to the tenant to show the reason for his non-payment or default even under Sub-section (3) of Section 22 and thus although the proceedings continued in this case, it cannot be said that the benefit of Section 22(3) could not have been extended to the tenant. The learned Senior Counsel has placed reliance on the decision of this Court in **Shri Faustino Rego V/s. Vishnu Roulou Rau (deceased by LR's) & Ors. 1996 (1) Goa L.T. 268, Smt. Maria Madeirae Fernandes V/s. Vishnu Mahadeo Kanekar AIR 1987 BOMBAY 240** and two decisions of the Hon'ble Supreme Court in the case of **Kewal Singh V/s. Smt. Lajwanti (1980) 1 SCC 290 & Mam Chand Pal V/s. Shanti Agarwal (Smt.) (2002) 3 SCC 49**. The learned Senior Counsel would submit that the Rent Control Legislation is primarily for the

benefit and protection of the tenants, as long as the tenant complies with his obligation under the tenancy. He submits that the original tenant having promptly deposited the arrears of rent cannot be denied the benefit of Section 22(3) of the Act, merely because the proceedings were contested on merits.

10. On the contrary, Shri Agha, the learned Counsel for the respondent has supported the impugned judgment. He submits that there are enough circumstances on record to show that the original tenant did not intend to take benefit of Section 22(3) of the Act, as he had expressed intention to contest the same and the application was indeed contested. He submits that thus the learned Rent Controller could not have suo motu given the benefit of the provisions of Section 22(3) of the Act to the tenant. The learned Counsel pointed out that mere deposit of the arrears is not sufficient as Section 22(3) also contemplates deposit of the

costs. The least the tenant could do is to express willingness to deposit such costs which is not done in this case. The learned Counsel has placed reliance on the decision of this Court in ***Shri Shaikh Ibrahim Shaikh Mohammad V/s. Shri Joao de Andrade e Souza 1990(2) Goa L.T. 425 and Nurallah Kamrudhin Veljee V/s. Mrs. Veronica Menezes & Ors. 1999 (2) ALLMR 217*** and the decision in ***Yeshwant Vinayak Naik V/s. Casimiro A.J.A. Ribeiro & Ors. in Writ Petition No.52/B of 1982*** decided on 5/10/1984. The learned Counsel submits that once the Rent Controller had found on merits that the tenant had failed to prove that the landlord had refused to accept the rent and that the tenant had sent the money order regularly, the benefit under Section 22(3) could not have been extended.

11. I have given careful consideration to the rival circumstances and the submissions made and I do not find that any case for

interference is made out.

12. The scheme of Section 22 of the Act is subject matter of several decisions and the legal position as to the opportunity available to the tenant under Section 22(3) and Section 22(4) of the Act, is no longer res integra. To my mind, the distinction tried to be made out between Section 22(3) and Section 22(4) may not be gone into as the same does not arise in this petition. This is because as rightly found by the Administrative Tribunal there was no application under Section 22(4) of the Act placed on record by the tenant. Thus, the consideration has to be limited to the opportunity available to the tenant under Section 22(3) of the Act. Precisely the issues which arise for determination are as under:

(i) Whether the tenant intended to avail of the benefit of section 22(3) of the Act in this case?

(ii) If yes, whether such benefit can be extended after a full fledged contest and at the fag end

of the hearing of the application under Section 22(1)(a) of the Act?

(iii) Whether the Administrative Tribunal was justified in interfering with the order of the Rent Controller?

The record discloses that the respondent/landlord had issued a notice dated 10/03/1980 to now deceased Sitaram Naik claiming arrears of rent for the period from June, 1979 till February, 1980 which according to the landlord were not paid. The respondent/landlord therefore filed the application before the Rent Controller on 10/07/1980 on the ground of arrears from June 1979 till the filing of the application. Indisputably, the original tenant filed an application within 30 days of the service of the notice i.e. on 10/07/1980 setting out his desire to deposit the rent, without prejudice to the contentions made in the written statement and the contentions and submissions being made before the Court. The tenant also stated that the landlord had refused the rent sent by money order.

It is thus clear that this application does not make any reference to the deposit being made under Section 22(3) of the Act and on the contrary it shows the intention of the tenant to contest the application filed by the landlord which is further apparent from the fact that it was contended that the landlord had refused to accept the rent sent by money order. The tenant thereafter filed the written statement contesting the application. It was contended that he is not in arrears and the proceedings are vexatious. It was also contended that the suit premises were leased on 1/01/1955 and, therefore, the landlord cannot enhance the rent in terms of Section 12 of the Act. The tenant apart from seeking dismissal of the application sought compensation under Section 28 of the Act on the ground that the application was frivolous and vexatious. Not only that he also sought the resolution of the dispute about the rent payable by the tenant. Thus, the intention of the tenant to contest the proceedings is writ large

on record.

13. As noticed earlier, the Rent Controller on the basis of the rival pleadings framed issues. The parties led their evidence and the learned Rent Controller answered issue nos.2 & 3 in favour of the landlord, thus holding that the tenant had failed to prove that the landlord had refused to accept the rent which was allegedly sent by money order. The Rent Controller also refused to accept that the application was vexatious. The question is whether in such circumstances while deciding the application and after having arrived at such findings against the tenant, the Rent Controller could have then fallen back upon the application dated 10/07/1980 and the consequent deposit of rent to hold that if the costs are determined "the same would suffice in the interest of justice". In my considered view, the answer has to be in the negative.

14. It is evident that the opportunity under Section 22(3) of the Act is required to be availed at the threshold i.e. within 30 days from the receipt of the summons. This is the second opportunity available to the tenant where the tenant without going into the question as to who was responsible for the accumulation of the arrears can straight away deposit the arrears and get out of the proceedings. The third and the final opportunity under Section 22(4) of the Act comes with a rider, where the tenant is obliged to prove that the default in payment was not without reasonable cause, for instance, in a case where the landlord refuses to accept the rent, inspite of its tender.

15. It is apparent that under Section 22(3) of the Act, apart from the deposit of arrears of rent the tenant has also to deposit costs. It is true that such costs are not provided for or statutorily quantified and, therefore, the tenant has necessarily to depend upon such costs

being determined by the Rent Controller. This Court after noticing the dichotomy, in the case of **Yeshwant Naik** (supra) held thus in para 7 of the judgment:

7. It is no doubt true that there is no provision in the Act postulating what is the amount of the cost of the application for eviction. Therefore, it would appear that Sub-section (3) has cast an impossible burden on the tenant to avail himself of the benefit provided therein. It is, therefore, necessary to interpret the said provision of law in a manner which gives some meaning and proper and workable extent to the requirement to deposit the cost of the application for eviction along with the arrears of rent. Section 48 of the Act provides that subject to such conditions and limitations, if any as may be prescribed, the cost of and incident to all proceedings under the Act before any original, appellate or revisional authority under the Act, shall be in the discretion of the said authority, which shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose. Therefore, it is clear that the authorities under the Act, particularly the Rent Controller, are given powers to fix at the discretion the amount of cost of any proceedings under the Act. Thus, since Sub-section (3) of Section 22 requires the tenant to deposit the arrears of rent

along with the costs of the application and since there is no method for the tenant to calculate such cost of application, the only way to consolidate and understand the section is that the tenant who wants to avail of the benefit given to him by the said provision of law has to along with the application to deposit the arrears of rent, request the Rent Controller to fix the cost of the application. If the Rent Controller, inspite of that, does not determine the cost of the application, then an impossibility will arise for the tenant and by depositing alone the arrears of rent, the benefit of Sub-section (3) may be given to him. However, if the tenant does not at all approach the Rent Controller with a prayer for the fixation of the cost of the application and merely seeks to deposit the arrears of rent, then manifestly the benefit of Sub-section (3) of Section 22 of the Act does not accrue to him."

(Emphasis added)

16. It has been held that Sub-section (3) of Section 22 of the Act has to be interpreted strictly and on "true interpretation" of provisions of Sub-section 3 of Section 22 of the Act, the tenant to avail of the benefit given to him therein should not only deposit the arrears of the rent, but at the same time deposit the

costs of the application for eviction. In the present case, as noticed earlier the tenant has not even shown his willingness in the application dated 10/07/1980 to deposit the costs as may be determined by the Rent Controller. In such circumstances, I find that the petitioner never intended to avail of the benefit of Section 22(3) of the Act and the Rent Controller was in error in extending the benefit of Section 22(3) of the Act to the tenant and that too at the fag end of the proceedings when on merits the issues were answered against the tenant. This point nos.(i) and (ii) will have to be answered in the negative.

17. The legal position as to the distinction between Section 22(3) and Section 22(4) of the Act is to my mind no longer res integra.

18. In this regard, a useful reference could be made to the decision in the case of **Smt. Maria Madeira Fernandes** (supra) in which it has

been held thus:

"The common feature of Sub-sec. (4) of S.22 is the acceptance of the position of being in arrears of rent but by their nature these two provisions are entirely different and operate on two different planes. Irrespective of whether the tenant is in default or not, under Sub-sec. (3) he merely indicates his willingness to deposit the rent and agrees to pay the cost and gets out of the eviction and the proceedings are terminated there and then only."

19. The case of **Shri Faustino Rego** (supra) to my mind would be distinguishable as in that case the tenant had expressed his willingness to deposit all arrears of rent together with costs, which is not the case herein.

20. In the case of **Mam Chand Pal** (supra), the Supreme Court has held that in respect of provisions regarding tender or deposit of rent in the Court at first hearing, a technical and rigid view need not be taken, when the tenant has made substantial compliance. The Supreme Court held that Section 20(4) of the U.P. Urban

Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is to do substantial justice between the parties and level the equities between them by securing for the landlord the arrears of rent, damages for use and occupation, and legal expenses while saving the tenant from eviction. In that case, there was a short fall of the amount payable under a particular head and it was held that the same may be treated against any other amount paid which was otherwise not required to be paid. It can thus be seen that the present case is distinguishable on facts. The Supreme Court in fact has clarified (in para 10) that it should not be inferred that non compliance with any requirement of Section 20(4) of the UP Act is permissible.

21. It is evident that, the nature of the non-compliance, whether it is technical or minor and whether there is substantial compliance would always be a question depending upon facts

and circumstances of each case. In any case, the question whether there is substantial compliance, or whether the lapse is of a technical or minor nature presupposes that the tenant wanted to take benefit of opportunity under Section 22(3) of the Act, which itself is lacking in this case.

22. In the case **Kewal Singh** (supra) there was challenge to the vires of Section 25-B of the Delhi Rent Control Act, 1958 which was negatived. It has been held that the Rent Control Act is a piece of social legislation and is meant mainly to prevent the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant as to destroy their legal right to property, certain salutary provisions have been made by the legislature which give relief to the landlord. It is difficult to see as to how the said judgment can come to the aid of the

petitioners herein.

23. In the result, I find that the Administrative Tribunal was justified in interfering with the order passed by the Rent Controller and the petition is without any merit and it is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.

At this stage, the learned Counsel for the petitioners prays for extension of stay for a period of six weeks. The learned Counsel for the respondent has no objection for the same.

In such circumstances, the interim stay already operating shall continue for a period of six weeks from today.

C.V. BHADANG, J.

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