

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.793 of 2015**

1. Shri Joel Avelino Noronha,
Major of age, businessman,
r/o H.no.411/A-II,
Panzorconi, Cuncolim,
Carrying on business at
Yohan Pharmacy,
Miranda Building,
Luis Miranha road,
Margao-Goa.
 2. Shri Assuncao Teodosio
Serafino Fernandes,
c/o Ratnadeep Bar,
Costa Pereira Building,
Municipal Square,
Margao-Goa.
Through his Power of
Attorney Shri Nevil
B. Furtado r/o H.No.51,
Copelwaddo, Sernabatim,
Salcete- Goa.
- .. Petitioners

Vs.

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
Building, Luis Miranda Road,
Margao-Goa.
- .. Respondents

Mr. Nigel da Costa Frias, Advocate for the petitioners.

Mr. R. G. Ramani with Mr. Ulhas Raikar, Advocate for the respondents.

CORAM :- S. B. SHUKRE, J.

Date : 17th February, 2016.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. By this petition, the petitioners have challenged legality and correctness of the order dated 15/07/2015 passed by Principal District Judge, South Goa, whereby, by invoking power under Section 32(4) of Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Rent Act, for short), the proceedings of Rent Appeal No.35/2013 have been directed to be stopped with a further direction to the petitioners to put the respondents in possession of the suit premises.

3. Petitioner no.2, according to the respondents, is their tenant and petitioner no.1 has been inducted as subtenant by petitioner no.2 without any permission from the respondents. The respondents, therefore, launched eviction proceedings against

both the petitioners and during the pendency of these proceedings, an application under Section 32(4) of the Rent Act came to be filed by the respondents contending that the petitioners have failed to deposit arrears of rent as well as rent that was due and payable every month. This application was granted by the Rent Controller and the petitioners were directed to put the respondents in possession of the suit premises. Against this order, an appeal was filed by the petitioners before the Administrative Tribunal, but later on, owing to amendment introduced to the Rent Act, the powers of the Appellate Authority under the Act were conferred upon the District Judge and therefore, Rent Appeal came to be transferred to the Court of District Judge, South Goa and it was registered as Rent Appeal No.35/2013.

4. During the pendency of Rent Appeal, the respondents realised that there were some defaults in depositing the amount of rent in the District Court and, therefore, they moved yet another application under Section 32(4) of the Rent Act for stoppage of the proceedings and putting them in possession of the suit premises. After hearing both sides and considering the record before it, the Court of District Judge, South Goa, by the order passed on 15/07/2015, allowed the application and being aggrieved by the

same, the petitioners are before this Court in the present writ petition.

5. Learned Counsel for the petitioners submits that the petitioners have substantially complied with the requirement of Section 32 of the Rent Act and they have been granted permission to deposit rent or arrears of rent from time to time not only by the Rent Controller but also by the Appellate Authority. He submits that once leave is granted to the tenant for depositing of rent under the provisions of Section 32, past conduct or past defaults of a tenant cannot be considered so as to record a finding that the tenant is a cantankerous and habitual defaulter. He submits that there has been a series of judgments holding that the provisions of Section 32 of the Rent Act are not mandatory and are only directory in nature in the sense that once the application is made under Section 32(4) of the Rent Act, the Court is not compelled to allow such an application. He submits that just because such an application is made, the Court is not bound to grant it and Court has to be discreet in exercising its jurisdiction under Section 32 of the Rent Act. He further submits that the well settled principles of law applicable to exercise of such a discretion indicate that the sufficient cause contemplated under subsection (4) of Section 32 has to be interpreted as something reasonable which prevented

the tenant from making timely deposit of the rent and thus, has broader connotations which must be understood in the peculiar facts and circumstances of each case.

6. Learned Counsel for the petitioners further submits that the petitioners have deposited all the arrears of rent right upto October, 2015 and it may be that for a period of one month i.e. for the month of September, 2014, the rent has not been deposited but, that was only due to some inadvertence on the part of the petitioners. He further submits that the petitioners had also filed an application on 28/10/2014 seeking leave of the District Court to deposit rents for the months of August, September and October, 2014 although the petitioners had already deposited rent for the month of August, 2014 and this was clear from the challans dated 30/05/2013 and 08/08/2014, which disclose that the petitioners had deposited rent onwards from the month of June 2013. He further submits that this application was pending before the District Court and was not decided by the District Court at all till the impugned order was passed. He submits that this would only show bonafides of the petitioners and, therefore, the learned District Judge ought not to have reasoned that the petitioners are in the habit of paying the rents belatedly or committing defaults in payment of rent.

7. In support of these contentions, learned Counsel for the petitioners has referred to me the followings cases :

(i) ***Shri Mariano Silveira Vs. Antonio Silveira***

(W.P.No.128/1990.)

(ii) ***Shri Shamsunder Kaka Talkar Vs. Rent***

Controller and Ors; 1995(1) GLT 117

(iii) ***Smt. Kanchan Ramdas Moraskar Vs. Dr.***

Armando Joe Benedito Mascarenhas; 2013(2) GLT

630 (Bom)(PB)

(iv) ***Datta Anant Ghadi Vs. Smt. Guilhermina***

Silveira; 2000(1)GLT 39.

8. Learned Counsel for the respondents submits that no fault could be found with the impugned order as the learned District Judge has taken into consideration the consistently cantankerous and contumacious attitude of the petitioners in committing defaults and disregarding the provisions of law. He submits that the learned District Judge has given instances of the defaults or the delayed payments of rent and if these instances are taken into consideration, he further submits, the only conclusion that can be drawn is that the petitioners have disqualified themselves from availing of benefit of Section 32 of the Rent Act.

He submits that it has been consistently held by various benches of this Court that where default is willful or intentional or where it is persistent, the discretion vested in the Court regarding stoppage of the proceedings must be exercised. He also submits that even the Hon'ble Apex Court has held that although tenancy laws are intended to throw a protective net around the tenants, the laws could not be stretched to an extent to render help to such a tenant who is a willful defaulter or who intentionally disobeys the provisions of law, which otherwise stand for his benefit. In support, he also refers to the case of **Shri Datta Anant Ghadi** (supra). Additionally, learned Counsel places his reliance upon the case of **E. Palanisamy Vs. Palanisamy (Dead) by LRs and others**, (2003)1 SCC 123.

9. Section 32(1) requires a tenant to clear all arrears of rent and also continue to pay or deposit any rent, which may subsequently become due, once the tenant is before the Rent Controller or before any other Appellate Authority under the Rent Act. If this obligation is not fulfilled by the tenant, the consequence that follows is provided under subsection (1) of Section 32. It is that the tenant cannot contest the proceedings, whether before the Controller or any Appellate or Revisional Authority. Under subsection (4) of Section 32, another

consequence of failure of the tenant to pay or deposit rent in accordance with the requirement of subsection (1) has been provided. It lays down that if any tenant fails to pay or deposit the amount as afore-said, the Rent Controller or Appellate or Revisional Authority would be entitled to stop all further proceedings and make an order directing the tenant to put the landlord in possession of the rented premises, unless sufficient cause for condoning the default is shown.

10. In the case of **Mariano Silveira** (supra), it has been held that the provisions of Section 32 being a part of beneficial legislation, the concerned authority is not bound to pass an order of stoppage of proceedings just on the asking of the landlord and would have to take into account all the facts and circumstances of the case. It has been further held that the Authority would have to consider whether the default is willful or unintentional. It has also been held that if the facts and circumstances of the case disclose that the default is persistent or the tenant has exhibited a cantankerous attitude, then, it would be a case of absence of sufficient cause to excuse the defaults. In the case of **Shamsundar Kaka Talkar** (supra), so far as the view that the provisions of Section 32 cannot be considered to be mandatory in nature is concerned, the learned Single Judge of this Court has

taken the same view. The learned Single Judge, however, has gone further when he holds that even if no sufficient cause is shown by the tenant, the Rent Controller must give to the tenant yet another opportunity to pay the rent, before stopping the proceedings.

11. In the case of ***Datta Ghadi*** (supra), the Division Bench of this Court has held that the view that second opportunity must be given to the tenant for depositing of the rent under the provisions of Section 32 before stopping the proceedings, is incorrect and does not emerge from the plain reading of the provisions of Section 32 of the Rent Act. The Division Bench held that when the intention of the Legislature can be ascertained from the plain meaning of the words used in Section 32(4), there would be no reason for the Court to make any interpretation of words by resorting to Section 22(4) of the Rent Act, for the Act speaks for itself. At the same time, the Division Bench also held that the Rent Controller or the concerned authority is not bound to grant an application filed under Section 32(4), the moment it is filed and that it would be subject to discretion of that authority which must be soundly exercised keeping in view the requirement of showing of sufficient cause inserted in this section.

12. In the case of **Smt. Kanchan Ramdas Moraskar** (supra), it has been held that the test which must be applied for granting an application under Section 32(4) is whether the conduct of the petitioner is contumacious, whether payment has been made after a cantankerous contest and whether the conduct is such as to cause harassment to the respondent/ landlord.

13. It would be clear from the principles of law laid down in the above cases and which are now well settled that there has been a consistent view that the expression of sufficient cause has to be understood as denoting something which is opposite to such a conduct on the part of the tenant as is indicative of persistent defaults, which is intentional and which is borne out from the attitude of the tenant to cause harassment to the landlord. Such conduct does not include inadvertent or unintentional defaults, though persistency of defaults itself may show mala-fide intention. If it is demonstrated by a tenant that there were some reasons which prevented him from making the payment of rents and those defaults were only occasional, the Court may be justified in holding that sufficient cause is shown and thus refusing to exercise its discretion conferred on it under Section 32(4) of the Rent Act. In other words, the discretion that has to be exercised by the authority under Section 32(4) of the Rent Act must be

sound and in accordance with the well settled principles of law.

14. The order impugned herein shows that the learned District Judge has taken into account past conduct of the petitioners and concluded that this conduct exhibited persistent attitude of committing defaults without there being any reasonable cause and thus amounted to contumacious behaviour on their part not warranting grant of any protection from the Court under Section 32(4) of the Rent Act. According to learned Counsel for the petitioners, past conduct of the petitioners in this case could not have been taken into account as the applications of the petitioners seeking leave to make payment of arrears of rent, filed from time to time, were allowed by the Court and once those applications were allowed, the previous defaults could be said to have been condoned by the Court. Learned Counsel for the respondents points out that some of the applications or to be precise, the application dated 30/06/2015 filed in this regard by the petitioners was allowed by the learned Judge without prejudice to the rights of the respondents and this would show that the learned District Judge has not accepted the conduct of the petitioners as rightful and has made it subject to due adjudication of the Court. The said order is indeed passed below the application dated 30/06/2015 which is at Exhibit 18. It shows that

the application was granted without prejudice to the rights of the respondents. It is obvious that the order is conditional and one does not require any deep contemplation to understand its nature and purport. When the order says that the application is being granted without prejudice to the rights of the other side, the underlying intention is clear. The Court passing the order does not adjudicate upon the sufficiency of the cause shown for making of delayed payment and the Court keeps the issue open to be decided at an appropriate time. Therefore, I find that the contention of the learned Counsel for the petitioners is not correct when he says that past conduct of the petitioners, which is otherwise relevant for determining whether the tenant is a habitual defaulter or a cantankerous and contumacious tenant, could not have been considered by the learned District Judge because giving permission to the petitioners amounted to accepting their contention that there was some reasonable excuse for them to pay the arrears of rent in a delayed manner.

15. If we consider the entire record of the case, what comes to the fore is that the defaults made by the petitioners were not occasional rather they were persistent. The dispute regarding eviction of suit premises was pending for quite a long period of time. But, the petitioners did not deposit rents though there was

statutory obligation imposed upon them for depositing regularly and on month to month basis the rents under Section 32(1) of the Rent Act. Rents that were due for the period from October, 1994 to March, 2012 were deposited by the petitioners in lumpsum only in the year 2012. Rents for the months of June, 2012 and onwards upto May, 2013 were deposited in lumpsum on 30/05/2013. Rents for the period from June 2013 to July, 2014 were deposited again in one go on 08/08/2014. No doubt, the applications for permitting the petitioners to deposit such arrears of rents were made by the petitioners and they were also granted by the concerned authorities. But, the fact remains that the petitioners went on committing defaults quite regularly by not paying the rents on monthly basis within the time limit prescribed under the law. Section 32(1) is very clear in this regard. It mandates monthly payments or deposits of rents and debars the tenant from contesting the proceedings even after a single default is committed by him. Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (the Rules of 1969, for short) lays down that such rent should be deposited within 15 days from the date on which the rent becomes due and payable by a tenant. Thus, the law has given a latitude to the tenant of not more than 15 days from the date on which the rent is due and payable for making good the mistake of not paying the rent. Here

in this case, there have not been just a few occasions when the defaults continued and the occasions were too many not to be termed as inadvertent or bona-fide or justified mistakes which together showed cantankerous or contumacious attitude of the petitioners. Even today, the rent for the month of September, 2014 is outstanding which is an admitted fact.

16. The petitioners submit that third application filed on 28/10/2014 seeking leave of the Court to deposit rent for the months of August, September and October, 2014 was never decided by the District Court. Not deciding this application by the District Court is a fact borne out from the record. But, there is also another fact which glaringly comes out from the record and it is that the petitioners filed another application after the application dated 28/10/2014 in which the petitioners sought leave of the Court to deposit rent from October, 2014 and onwards till final disposal of the appeal. This application was made by the petitioners on 30/06/2015. But, in this application, the petitioners did not make even a whisper of pendency of their previous application or did not seek leave of the Court afresh at least for depositing the rent for the month of September, 2014 which admittedly was outstanding. According to the learned Counsel for

the petitioners, this was a mistake committed in drafting by the learned Advocate for the petitioners. The explanation cannot be accepted. By now, the petitioners, who are into this litigation for more than two decades, have already become well acquainted with the provisions of Section 32 of the Rent Act and cannot be said to be so naive as not to seek leave of the Court specifically and if required repeatedly for depositing the rent for the month of September, 2014. In fact, I do not understand, as to why the petitioners felt any need to make several applications from time to time for depositing of rents for specific periods of time and just one such application filed at the commencement of appeal proceedings would have sufficed the purpose. If the petitioners were prosecuting their remedy under the law in a bonafide manner, the first thing that the petitioners would have done, when the appeal came to be transferred to the Court of District Judge on 30/07/2013, was to file an application at the earliest possible opportunity under Section 32(1) read with Rules 5 and 7 of the Rules of 1969, seeking permission of the Court to grant them liberty to deposit the rents and continue to deposit the rents till final disposal of the appeal. The petitioners instead, filed an application on 26/06/2014 for allowing them to deposit rents only for the months of June, 2013 to July, 2014. This itself shows that the petitioners' intentions in complying with the provisions of law

were not clean. Even the Hon'ble Apex Court in the case of **E. Palanisamy** (supra), has observed that such tenants cannot be given benefits of various provisions of Rent Legislation which are normally intended for the benefit of the tenants, when it observed in paragraph 5 thus :

“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 with the statutory provisions. Equitable consideration has no place in such matters.”

17. In the circumstances, I find no substance in this writ petition. The impugned order cannot be faulted with in any manner. The petition deserves to be dismissed. Therefore, the petition stands dismissed.

18. At this stage, the learned Counsel for the petitioners has prayed for staying the effect and operation of this order and continuation of ad interim stay granted on 16/10/2015, for a period of 6 weeks to enable the petitioners to approach Hon'ble Apex Court in the matter. The prayer is opposed by the learned

Counsel for the respondents. However, considering the fact that uptill now the ad interim stay was in operation, the prayer is granted. For a period of six weeks, the effect and operation of this order is stayed and ad interim stay granted earlier is directed to be continued for a period of six weeks from this order.

S. B. Shukre, J.

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