

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 26 OF 2016

IN

WRIT PETITION NO. 408 OF 2009

MRS. ARTI SITARAM NAIK @ SMITA
SUDARSHAN SHENOY AND 2 ORS.

... Applicant

Versus

SOCIADADE VERLEKAR THROUGH ITS
ADMINISTRATOR SHRI. ROULU ANANT
VERLEKAR.

... Respondent

Mr. N. Sardessai, Senior Advocate with Mr. L. Raghunandan,
Advocate for the applicants.

Coram:- C. V. BHADANG, J.

Date:- 10th August, 2016

P.C.

This is an application for review of the judgment and order dated 18/07/2016, passed by this Court in W.P.No.408/2009.

2. The short contention on behalf of the applicants is that although this Court has noticed the submissions on behalf of the applicants on the basis of proviso to Section 22(3) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act, for short), the same have not been considered, which is an error apparent on the face of the record.

3. I have heard Shri Sardessai, the learned Senior Counsel for the

applicants. With the assistance of the learned Senior Counsel for the applicants, I have gone through the judgment dated 18/07/2016 and the relevant provisions of the Act.

4. It is submitted on behalf of the applicants that the difference in phraseology as employed in Sections 22(3) and 22(4) of the Act would indicate that even after the tenant takes a recourse to Section 22(3) of the said Act and pays off the arrears, the proceedings would continue and the tenant would be able to justify the reasons for the default. It is next contended that this would be necessary because the proviso to Section 22(3) of the Act gives only a single opportunity to take the benefit of the said Section. It is next submitted that the observations of Division Bench in the case of SMT MARIA MADEIRAE FERNANDES VS. VISHNU MAHADEO KANEKAR; 1987 BOMBAY 240 are obiter as the said case arises out of the provisions of Section 32(4) of the Act and interpretation, as sought to be placed on the proviso to Section 22(3), was not subject matter of issue.

5. I have carefully considered the circumstances and the submissions made.

6. The question is whether on account of the phraseology as used in Section 22(3) of the Act, coupled with the fact that the opportunity to avail the benefit of Section 22(3) of the Act is granted only once, is

sufficient to read into Section 22(3) an entitlement of the tenant to show and establish that the default was for justifiable reason, when it is not so said explicitly in the said provisions. In my considered view, the answer has to be in the negative. Merely because Section 22(3) opens with "no order of eviction shall be passed against the tenant", would not be sufficient to read into Section 22(3) an opportunity or entitlement of the tenant to establish that the default was for some justifiable reasons. Similar would be the case as regards the proviso to Section 22(3) of the Act. The matter can be looked at from another angle. Assuming that a tenant takes benefit of Section 22(3) and pays off the arrears and the proceedings continue (as claimed by the applicants) for the limited purpose of enabling the tenant to establish that the default was for a justifiable reason and the tenant succeeds in establishing the same, the proviso cannot come to the aid of the applicants, in as much as the proviso does not make any distinction between a default, which was without any reasonable cause or justifiable reason and a default where there are justifiable reasons.

7. The whole argument on behalf of the applicants is based on the premise that in as much as the benefit of Section 22(3) of the Act is available only once, the tenant has to be afforded an opportunity to establish that the default was for some justifiable reason even under Section 22(3). In my considered view, had the Legislature intended to provide the tenant an opportunity to establish that the default was

for some justifiable reason, nothing prevented it from saying so under Section 22(3). In my considered view, the circumstances, namely the language used in the opening part of Section 22(3) of the Act and the fact that an opportunity to avail the benefit of Section 22(3) is available only once, are not sufficient to read into subsection (3) of Section 22 of the Act, something, which is not there.

8. It is clear that the Act offers in all three opportunities to the tenant, one prior to initiation of the proceedings and two after initiation of the proceedings. It is really a matter of choice for the tenant under Section 22(3) of the Act, which is less onerous than Section 22(4) of the Act. The applicants can simply make payment of the arrears and get out of the proceedings and to that extent that is for the purposes of the eviction under Section 22(1)(a) of the Act, the proceedings would come to an end.

9. I find that this Court has already negated the contention. No case for review of the judgment is made out. Civil Application (Review) is, accordingly, rejected.

C. V. BHADANG, J.

SMA