

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 889 OF 2015

Smt. Kanchan Ramdas Moraskar,
H. No. 9, Betim, Bardez, Goa.

..... Petitioner

V e r s u s

Dr Armando Joao Benedito Mascarenhas,
(since deceased) through his L.R.s,

a) Janete Mascarenhas (widow),
r/at Near Blue Boy Hotel,
Caranzalem, Goa.

b) Reginaldo Sequeira,
through his attorney,
Taran Marc Roy,
R/ at A2/F2, Miloc,
Ribandar, Goa.

..... Respondents

Shri Sudin Ugaonkar, Senior Advocate with Ms. T. Ghanekar, Advocate for the
Petitioner.

Mr. J. E. Coelho Pereira, Senior Advocate with Ms. V. Braganza, Advocate for the
Respondent no. 1(a) and (b).

Coram :- **F. M. REIS, J**

Date : **21st December, 2016**

ORAL JUDGMENT

Heard Shri Sudin Usgaonkar, learned Senior Counsel appearing for
the petitioner and Shri J. E. Coelho Pereira, learned Senior Counsel appearing for
the respondent nos.1(a) and (b).

2. Rule. Heard forthwith with the consent of the learned Counsel.
Learned Counsel appearing for the Respondent no. 1 (a) and (b), waives service.

3. The challenge in the above petition is to an Judgment and order

passed by the Appellate Authority dated 18.8.2015 whereby an application filed by the respondent under Section 32(4) of the Goa, Daman & Diu (Lease, Rent and Eviction) Control Act ("the Act" for short) for non-payment of rent during the pendency of the appeal preferred by the respondents came to be allowed and the proceedings were ordered to be stopped and the petitioner was directed to hand over possession of the said premises to the respondents.

4. Briefly the facts required for considering the above petition are that proceedings for eviction were initiated by the respondents who were the landlords of the subject premises on different grounds including the ground for non-payment of rent. During the pendency of the said proceedings, as the petitioner had defaulted in the payment or depositing the rent before the Rent Controller, an application was filed by the respondents under Section 32(4) of the Act to stop the proceedings and to hand over the possession of the said premises to the respondents. The petitioner tried to justify the default on different counts including the ground that as there was litigation in the family there were justifiable grounds not to deposit the rent. The justification claimed by the petitioner was accepted by the learned Rent Controller and by an order dated 9.9.1997 the application filed by the respondents came to be rejected.

5. Being aggrieved by the said order the respondents preferred an appeal before the Lower Appellate Authority and in such proceedings as there was default in non-payment of rent in terms of said Act, the respondents filed an application under Section 32(4) of the Act to stop the proceedings and to direct the

petitioner to handover the possession of the subject premises to the respondents. Just before the filing of such application, the petitioner also filed an application to permit them to deposit the arrears of rent which were for a period of more than 9 years and to condone the delay in filing such application. The grounds for non-deposit of rent inter alia was that the petitioner had financial difficulty to deposit such rent and that thereafter the petitioner got married and is now well settled in life and was in a position to deposit such rent. It is pertinent to note herein that rent payable to the respondents was Rs.35/- per month.

6. In reply to the application filed by the respondents, the petitioner raised similar stand justifying the delay in depositing the arrears of rent. The learned Appellate Authority by the Judgment and order dated 18.8.2012 allowed the application under Section 32(4) of the Act and stopped proceedings and directed the petitioner to be evicted from the subject premises.

7. Aggrieved by the said Judgment and order the petitioner has preferred the above Writ Petition.

8. Shri Sudin Usgaonkar, learned Senior Counsel has pointed out that there were justifiable grounds for not depositing the rent, as according to him, as there was a dispute with regard to occupation of the subject premises. The learned Senior Counsel further pointed out that only after the petitioner received a notice from his Advocate inquiring whether the rents have been deposited before the Appellate Authority that the petitioner learnt that she had failed to deposit the rent

and, as such, immediately thereafter filed an application to allow her to deposit the rent. The learned Senior Counsel further pointed out that immediately after receiving the intimation from the Advocate, the petitioners took steps to file an application seeking condonation of delay in depositing the rent. It is further pointed out that only thereafter, the respondents filed an application under Section 32(4) of the Rent Control Act to stop further proceedings and direct the eviction of the petitioners from the subject premises. The learned Senior Counsel further submits that the learned Appellate Court instead of considering whether the petitioners had sufficient cause in not depositing the amount or paying the rent to the respondents has proceeded to examine the correctness of the earlier default while passing the impugned order. The learned Senior Counsel further submit that the delay in depositing the amount which is of more than nine years is because of the financial difficulty of the petitioners and for the reasons stated in the application. The learned Senior Counsel has thereafter taken me through the impugned order passed by the Appellate Authority to point out that the learned Judge has misconstrued the evidence on record to erroneously come to the conclusion that the respondents have made out a case for granting relief under Section 32(4) of the Rent Control Act.

9. On the other hand, Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the respondents has supported the impugned order. The learned Senior Counsel has pointed out that the petitioners are claiming to be statutory tenants and the protection under the Rent Control Act can be availed of provided all the requirements as stipulated therein are complied with by the tenant. The learned

Senior Counsel further submits that in the present case, the Rent Control Act clearly provides that it is the obligation of the tenant to pay the rent to the landlord by a specific date or otherwise deposit the rent before the Rent Controller or in the proceedings for eviction are pending against him. The learned Senior Counsel further submits that as there was default in depositing the rent before the Rent Controller, the respondents had filed an application under Section 32(4) of the Rent Control Act which came to be dismissed though default was established. It is further pointed out that in the proceedings before the learned Appellate Court, the petitioners have failed and neglected to deposit the rent and as such the respondents are entitled to the relief under Section 32(4) of the Rent Control Act by stopping the proceedings and directing the petitioners to vacate the subject premises. The learned Senior Counsel further pointed out that the delay of nearly nine years has not been satisfactorily explained nor any such inordinate delay can be condoned by the Appellate Court. The learned Senior Counsel further pointed out that the excuse given by the petitioners of financial difficulty is totally farfetched as according to him the rent itself is a meager sum of Rs.35/- per month and the petitioners are running business in the subject premises located in a prime locality of city of Panaji. The learned Senior Counsel further pointed out that the learned Lower Appellant Court was justified to hold that the circumstances in which the notice was issued by the learned Advocate appearing for the petitioners to remind the petitioners to deposit the rent has not been explained and as such rightly granted the relief under Section 32(4) of the Rent Control Act. The learned Senior Counsel has thereafter taken me through the impugned order passed by the Appellate Court to point out that the learned Judge has minutely examined every

piece of material on record to come to the conclusion that there is no sufficient cause to condone the delay in depositing the rent. The learned Senior Counsel further pointed out that the Rent Control Act itself imposes obligations to pay the rent to the landlord on specific date and having failed to do so, the protection, if any, to the petitioners would no longer be available.

In support of his submissions, the learned Senior Counsel has relied upon the judgment passed by this Court in **Writ Petition No. 549 of 2008** dated 13.03.2009 in the case of **Shri Ashok Narayan Vernekar, Vs. Smt Umabai Gopinath Kesarkar(dec.) by her heirs** and judgment reported in **2016 Law Suit (Bombay) 203** in the case of **Joel Avelino NOronha, V/s Francisco Xavier Estanislau Miranda**. The learned Senior Counsel as such points out that the petition be accordingly rejected.

10. I have considered the submissions of the learned Counsel and I have also gone through the records.

11. On perusal of the judgment passed by the learned Lower Appellate Authority dated 18.8.2015, the learned Judge has noted that it is the case of the respondents that the petitioner/tenant has committed persistent defaults during the pendency of the appeal in effecting payment of the monthly rent of the subject premises, despite of the order to deposit Rs.35/- per month passed by the learned Rent Controller and such rent became due from February, 2003 for a continuous period of 107 months amounting to sum of Rs.3745/-. It is the case of the respondents that default committed by the petitioner/tenant is intentional with an

aim only to harass the respondents/landlords and the same is persistent and the conduct of the petitioner is contumacious all the while. It is the contention of the petitioner, on the other hand, that she had been regularly paying the rent towards the subject premises but later on due to the financial constrained which the petitioner had to go due to the family dispute the petitioner could not make the payment of rent towards the subject premises further claiming that she is a widow and had one male child who was staying with her. It is further her case that somewhere in December, 2002 differences developed between her and her said son which differences lasted for 7 to 8 years and during which time she was not properly looked after by the said son. It is further contended that the subject shop was run by her said son and she had no personal source of income. At times she had to borrow money from well wishers to make ends meet. She also contended that in the last week of December, 2011 when she received a postal card and later registered letter from her Advocate, she recollected about the present proceedings and met her Advocate and only at that time she realised the fact of not paying the rent towards the said premises. She therefore prayed to condone the delay and she may be permitted to deposit the rent for nearly 8 years. The learned Judge after examining the different contentions advanced before him has upon minutely going through the material on record come to the conclusion that the petitioner is a recalcitrant tenant and noting the judgment of the Apex Court reported in **2004(8) SCC 307**, in the case of **Aero Traders(P) Ltd Vs. Ravindra Kumar Suri**, has held that there was absolutely no ground on which any discretion could be exercised in favour of the petitioner. The learned Judge also noted the observation of the Apex Court reported in **2005(7) SCC 211** in the case of **Arma Ram Vs Shakuntala Rani**

to note that the act prescribes a procedure as to what must be done by the tenant if the landlord does not accept the rent and, as such, he is required to follow the prescribed procedure and in case the tenant does not, must be held to be in default. The learned Judge as such granted the application under Section 32(4) of the Act filed by the respondents dated 5.1.2012 and consequently, all future proceedings are stopped and the petitioner was directed to handover possession of the subject premises to the respondent.

12. On perusal of the application filed by the respondent, it is the contention of the respondents that the petitioner has failed to make the deposit of monthly rent of the subject premises from February, 2003 till date for a continuous period of 107 months amounting to sum of Rs.3745/- inspite of orders and directions issued by the Rent Controller in the order dated 9.9.1997. It is also contended that the respondents was a habitual defaulter and in habit of not depositing the monthly rent and is enjoying the occupation of the subject premises.

13. In reply filed by the petitioner there is no specific denial to the said averments but contended that the allegations which are contrary to the case set out in the application dated 5.1.2012 for depositing the rent should not be treated as being admitted. On perusal of the said application, I find that it is the case of the petitioner that initially during the pendency of the present proceedings the petitioner had been regularly paying the rent towards the subject premises, but however, later on due to financial constrains which the petitioner had to go due to family dispute, she could not make the payment of rent towards the subject premises. It is further

contention that from December, 2002 there arose differences between the petitioner and her son which lasted almost for 7 years. It was also contended that the dispute between her and her son was resolved and now the said son who is now even settled down in his life has married and both of them are taking proper care of the petitioner. It is further contended that on such counts the petitioner totally lost track of the present proceedings and only in the last week of December, 2011 the petitioner received the notice from the Advocate when she remembered about the payment of rent. What could be gathered from the above pleadings is that the petitioner was in default of payment of rent from February, 2003 up to the date of filing of the application i.e. 5.1.2012 which has not been deposited. The Eviction Petition was filed in the year 1997 and records clearly reveal that up to the year 2002 the petitioner was depositing the rent and abrupt stoppage from depositing of rent from 2003. There is no explanation as to how all of sudden i.e in February, 2003 she has stopped depositing such rent. The said Act provides a specific procedure in depositing the rent during the pendency of the proceedings before the Appellate Authority. There is a clear indication in the said Act that rents have to be paid or deposited to the land lord within the time stipulated therein.

Section 32 of the said Act reads thus:-

"Payment or deposit of rent during pendency of proceedings for eviction.

...

Sub Rule 1 Section 32 clearly provides that the tenant cannot contest the proceedings before the Appellate Authority unless rent has been paid or deposited in the Court during the pendency of such appeal. Such deposits had to be made within such

time prescribed. Sub Rule 4 of Section 32 of the Act clearly provides that if the tenant fails to pay or deposit the rent as aforesaid, 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 make an order directing the tenant to put the landlord in possession of the building."

14. The petitioner who is the statutory tenant is entitled to claim protection under the said Rent Control Act provided all the statutory provisions therein are duly complied with. In the present case, on going through Section 32 of the Rent Act there is a specific requirement that the tenant had to deposit all the rent to enable him to contest the proceedings before the Appellate Authority as already pointed out herein above. The petitioner had defaulted in deposit of rent and consequently the only aspect which remains to be examined is whether there is any sufficient cause which justifies the default to deposit the rent by the petitioner. The cause alleged by the petitioner is that such amount were not deposited on account of financial constrained and because of the dispute with the son of the petitioner. Financial constrains to deposit a meager amount of Rs.35/- per month cannot be a justification in not depositing the rent before the Appellate Court by the petitioner. Admittedly, the son is not a party to the proceedings and the Petitioner who is a tenant cannot hold on to the premises by allowing business activities therein and defaulting in depositing the rent for such an inordinate delay. on the ground of financial constrain. The petitioner having failed to deposit such rent is liable to the consequences as provided in Section 32 of the said Act. As such, financial

constrains without any material on record to substantiate such allegations cannot be a sufficient cause. In case the tenant is unable to pay the rent it is always open to him/her if he/she so desire to surrender the possession of the premises to the landlord. The learned Appellate Authority has rightly appreciated the material on record and has come to the conclusion that the petitioner had defaulted to deposit the rent and there is no sufficient cause shown for such default.

15. Apart from that, it is also to be noted that the appeal preferred by the landlord before the Appellate Authority is challenging an order wherein the Rent Controller had accepted the explanation in not depositing rent by the petitioner/tenant. This itself show that the petitioner is in a habit of defaulting the payment of rent and her conduct is contumacious and, as such, the default cannot be considered justified. The conduct of the petitioner in not depositing the rent and not complying with the directions to deposit the rent is serious and disclose irrational disregard to the provisions of Rent Act which requires the petitioner to deposit the rent in terms of the said Act. Even the ground claimed by the petitioner that she realised the default in depositing of the rent only after receipt the postal card from the Advocate in the year 2011 does not inspire confidence as it is not disputed that during the interregnum the proceedings were in progress before the Appellate Authority. Long delay of more than 100 months in not depositing the rent itself shows irrational attitude on the part of the petitioner of her default in payment or depositing of the rent. Having defaulted in payment of such rent the petitioner cannot avail the protection prescribed under the Rent Act. Though it cannot be disputed that the Appellate Authority has a discretion as to whether the proceedings

should be stopped and the tenant be directed to deliver possession to the landlord but the law cannot protect a tenant who has continuously defaulted in depositing the rent for a period of more than 100 months without any just or sufficient cause to condone such inordinate delay. The learned Appellant Authority has as such correctly examine the material on record and has come to the conclusion that the respondents is entitled for the relief sought in the said application under Section 32(4) of the Act.

16. In this context, the Apex Court in a Judgment reported in **2004 (8) SCC 307** in the case of the **Aero Traders (P) Ltd vs. Ravinder Kumar Suri**, considering that not even one month's rent was paid (Rs. 30/- per month), held that there was absolutely no ground on which any discretion could be exercised in favour of the tenant. The Apex court has observed at Paras 6 and 7 thus :

“6. The question which, therefore, requires consideration is whether the appellant has made out any ground for exercising discretion in his favour of not striking out his defence. According to *Black's Law Dictionary* “judicial discretion” means the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word “discretion” connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which

are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See 27 *Corpus Juris Secundum*, p. 289). When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.

7. In the present case, the finding of the Rent Controller and also of the Rent Control Tribunal is that the appellant set up a totally false plea of his having sent the rent through cheques to the landlord. Apart from pleading that he had sent the amount through cheques, he pleaded no other fact which could be taken into consideration by the Rent Controller for exercising discretion in his favour. It may be noted that the premises are commercial and are situate in Karol Bagh, which is a prime business area of Delhi and the rent is a paltry sum of Rs 30 per month. But the appellant did not pay even this small amount of rent, which is virtually a pittance, and has remained in arrears for a long period of time. There is absolutely no ground on which any discretion could be exercised in his favour. The High Court was, therefore, perfectly justified in setting aside the order passed by the Rent Control Tribunal and restoring that of the Rent Controller.”

17. In the present case, in a prime locality of a City of Panaji, the capital City of Goa, the Applicant has defaulted to deposit the rent for nearly nine years and of a poultry rent of Rs.35/- per month. There is no justification as pointed out herein above not to comply with the provisions of the Rent Control Act to pay or deposit the rent in terms of law.

18. In another Judgment of the Apex Court reported in **2005(7) SCC 211** in the case of **Atma Ram vs. Shakuntala Rani**, it has been clearly observed that the Rent Control Act prescribes the procedure to be followed by the tenant when the rents are not accepted and in case he does not follow such procedure, he has to be considered to be a defaulter. The Apex Court has observed at Paras 19, 21 and 22 thus :

“19. It will thus appear that this Court has consistently taken the view that in the Rent Control legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

20. ...

21. The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept the rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent

Controller giving the necessary particulars as required by sub-section (2) of Section 27. There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by Section 27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.

22. We are, therefore, satisfied that the High Court was right in holding that the appellant had failed to pay/tender arrears of rent for the period 1-2-1992 to 31-1-1995. The deposit made under the provisions of the Punjab Act was of no avail in view of the express provision of Section 27 of the Act.”

19. Considering the above observations of the Apex Court as pointed out herein above, I find that there are no good reasons pointed out by the Petitioner which would justify the delay in offering to deposit the rent. The conduct of the Petitioner clearly discloses that the Petitioner has not been serious in complying with the obligation to deposit the rent in terms of the Rent Control Act. The reasons disclosed depict irrational disregard to the obligations as provided in the Rent Control Act to avail of the benefits therein. The conduct of the Petitioner in not depositing the rent for such a long period of rent of over nine years, is clearly contumacious and without any justification and, as such, is liable to the

consequences as directed in the impugned Judgment. Even the receipt of the letter referred to by the Petitioner which gave rise to the Petitioner to move the application before the learned Appellate Authority itself appears to be suspect as there is nothing on record to show why the Petitioner defaulted in depositing the rent for such a long period when, admittedly, the proceedings were going on before the Appellate Authority.

20. The findings arrived at by the learned Appellate Authority cannot be said to be perverse in the facts and circumstances of the case and, as such, there is no case made out for any interference in the impugned Order in exercise of jurisdiction under Article 227 of the Constitution of India.

21. In view of the above, I find no merit in the above Writ Petition which stands accordingly rejected. Rule stands discharged.

F .M. REIS, J.

vn/arp/*