

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 69 OF 2016**

SMT.MAGDALENA FERNANDES
(SINCE DECEASED) AND 2 ORS.

... Petitioners

Versus

SMT.ROSY D'COSTA @ REGINA D'COSTA
AND 4 ORS.

... Respondents

Shri Sebastian Vales, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 20th June, 2016

ORAL ORDER :

By this petition, the petitioners who are landlords are challenging the judgment and order dated 6/06/2015 passed by the Appellate Board at Panaji in Rent Appeal No.19/2013.

2. The brief facts are that the petitioners have filed eviction proceedings being Rent/MAP/ARC/25/91 before the Additional Deputy Collector and Rent Controller at Mapusa under various provisions of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 (Act, for short). The learned Rent Controller by judgment and order dated 21/03/2003 has allowed the application on the ground of bonafide personal occupation as contained in prayer clause (a) of the said application. The respondent was directed to vacate the suit premises

within a period of 60 days and to hand over vacant and peaceful possession of the same to the petitioners.

3. The respondents challenged the same before the Appellate Board by filing Rent Appeal No.19/2013 which is pending. In the said appeal, the petitioners filed an application on 25/11/2011 purportedly under Section 32(4) of the Act for stoppage of the proceedings and for directing the respondents to put the petitioners in possession of the tenanted premises. The learned Appellate Board has dismissed the said application by order dated 6/06/2015, operative part of which reads thus :

O R D E R

The application stands dismissed however, with a direction to the appellant to effect the entire payment within one month from today if not effected in pursuance of order dated 29.11.2011 and to effect monthly rent in future regularly with a costs of Rs.5,000/- which is condition precedent to be paid by the appellant to the respondents as the arrears of rent are long standing and of more than eight years.

4. Feeling aggrieved the petitioners are before this Court.

5. I have heard the learned Counsel for the petitioners. None appears for the respondents. The learned Counsel for the petitioners on the previous date had sought time to take instructions whether the aforesaid

order passed by the Appellate Board was complied with by deposit of the rent as directed. The learned Counsel for the petitioners, on instructions, states that after the said order was passed the respondents have deposited the entire arrears before the Appellate Board.

6. In so far as the challenge on merits is concerned it is contended that once the respondent/tenant has defaulted in the matter of payment of rent and there is material to show that there was deliberate refusal to pay the amount, and that the behaviour of the petitioner is cantankerous or contumacious an order under Section 32(4) of the Act has to follow. He submits that the learned Appellate Board ought to have seen that in this case the conduct of the respondents was contumacious.

7. I have considered the circumstances and the submissions made. The Appellate Board in its order has noticed that the provision of Section 32(4) are directory and considering the object of the said provision and in the facts of the case the Appellate Board has held that the conduct of the respondents cannot be said to be labelled as persistent, deliberate, chronic or contumacious default.

8. In my considered view, the present petition arises out of an order

under Section 32(4) of the Act in which the Appellate Board has refused to exercise discretion in favour of the petitioner subject to a direction to the respondents to deposit the arrears of the rent which part of the order is said to be complied with. The appellate Board had fixed the main Appeal on 26/06/2015 and but for the stay by this Court, could have been disposed off by this time. In that view of the matter it would be appropriate that the Appellate Board decides the main appeal on its own merits in accordance with law. Needless to mention that the Appellate Board should decide the appeal on its own merits in accordance with law.

9. In such circumstances, I decline to entertain the petition which is accordingly dismissed. The Appellate Board shall decide the appeal as expeditiously as possible and preferably within a period of 6 months from the receipt of this order. Rival contentions of the parties are kept open. The petition is disposed off in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

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