

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 7 OF 2017

1. Shri Bhaskar D. Naik Karmali
and Ors. Petitioner/Applicants

V e r s u s

1. Smt. Kamalabai Shrirang Patil & Ors. Respondents

Mr. P. A. Kholkar, Advocate for the Applicants.

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

Date : **2nd March 2017**

ORAL ORDER

Heard Mr. Kholkar, learned Counsel appearing for the Applicants.

2. This is a Review Petition filed by the Petitioners of the Order passed by this Court dated 09.12.2016 essentially on the ground that the Judgments of the Apex Court reported in **(2003) 3 SCC 433** and **(1999) 6 SCC 396** have not been considered.

3. The above application is an abuse of the process of the Court as whilst examining the Writ Petition, the Judgment of the Apex Court reported in **2014 (11) SCC 20** in the case of ***Dina Nath & anr. vs. Subhash Chand Saini & Ors.*** was brought to the notice of the learned Counsel appearing for the Petitioners... wherein it was clearly held that the power to strike out defence and hand over possession of the rented premises is discretionary and only in cases of which the

conduct of the tenant can be considered to be contumacious and of willful default.

The Apex Court in the said Judgment has observed at Paras 12 and 22 thus :

“12. It is apparent that this Court has clearly opined that the power vested under Section 15(7) of the Rent Act to strike off the defence of a tenant is discretionary and not mandatory. It is therefore imperative to understand that every violation in implementation of the direction(s) issued by a Rent Controller under Section 15(1) of the Rent Act will not ipso facto lead to striking out the defence of a tenant. A Rent Controller must exercise his discretion keeping in mind the nature of the non-compliance. If the non-compliance is not serious, or is based on good reason, a Rent Controller would not strike off the defence of the tenant. Only when the non-compliance of the order passed by the Rent Controller under Section 15(1) of the Rent Act depicts irrational disregard to the order, or when the non-compliance is repeated, or when no justification has been expressed for the same, or for such other similar reason(s), the discretion vested in Section 15(7) of the Rent Act, would entitle the Rent Controller to strike off the defence of a tenant. In a given case even a single default depicting wilful, contumacious, or negligent and careless behaviour, could lead to the striking out of a tenant's defence. It is therefore apparent, that judicial discretion exercised in such a matter must be tempered with self-restraint, keeping in mind, that striking out a tenant's defence is an exceptionally harsh step,

which ought not be taken in a routine and casual manner. The court must carefully evaluate the facts of the given case, before exercising its discretion.

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22. For the reasons recorded hereinabove the appeal fails and is accordingly dismissed.

T.S. THAKUR, J. (*concurring on some issues in law and disagreeing on others, but disagreeing entirely on facts*)— Leave granted. I have had the privilege of going through the elaborate order proposed by my esteemed Brother J.S. Khehar, J. While I entirely agree with the view that the power to strike out the defence vested in the court under Section 15(7) of the Delhi Rent Control Act is discretionary and ought to be exercised only when the tenant deliberately, contumaciously or negligently fails to deposit the rent due from him, I have, however, not been able to persuade myself to hold that such deliberate neglect or contumacious failure has been established against the petitioner tenant in the instant case so as to justify the exceptional step of the Court striking out his defence at the threshold.”

The Apex Court in the said Judgment has clearly held that the power to strike of defence is discretionary and in the Judgment disposing of the Writ Petition, in the present case, it has been clearly held that there was no case made out for any interference in the discretion exercised by the authorities below whilst rejecting the application under Section 32(4) of the Goa Rent Control Act as the subject default was for the first time and has been explained.

4. In such circumstances, I find that there is no error apparent on the face of record which will call for the review of the Judgment passed by this Court.

5. The application stands accordingly rejected.

F .M. REIS, J.

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