

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 9 OF 2017
IN
WRIT PETITION NO. 632 OF 2015

MR. JOHN MIRANDA

... Applicant

Versus

MR. PETER ALVARES

... Respondent

Shri S. Lotlikar, Senior Advocate with Ms. Aditi Naik, Advocate for the Applicant.

Shri C.A. Coutinho, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 16th AUGUST, 2017.

ORAL ORDER:

This is an application for review of the judgment and order dated 24.02.2017, passed by this Court in Writ Petition No. 632/2015. By the said judgment, this Court has dismissed the Writ Petition, confirming the order passed by the learned District Judge, remanding the application to the learned Rent Controller.

2. I have heard Shri Lotlikar, the learned Senior Counsel for the applicant and Shri Coutinho, the learned Counsel for the respondent and perused record.

3. The brief facts are that the review petitioner is the landlord in respect of the subject premises, in which the respondent is a tenant. There is a written agreement of lease dated 01.06.1997, setting out the terms of the tenancy, which shows that the agreed rate of rent was Rs.500/- per month. It appears that the respondent filed an application under Section 18 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act, for short), for deposit of the rent at the rate of Rs.300/- per month. The review petitioner raised a preliminary objection to the maintainability of the application, on the ground that the Deed of Lease dated 01.06.1997, specifically sets out the rate of rent at Rs.500/- per month. The learned Rent Controller by an order dated 26.02.2008, upheld the preliminary objection and rejected the application filed by the respondent. This order was not carried any further by the respondent.

4. Subsequently, the review petitioner filed an application under Section 22(2)(a) of the Act, for eviction of the respondent on the ground of non payment of rent. The respondent appeared and filed an application on 15.09.2008, for deposit of rent, again at the rate of Rs.300/- per month. Undisputedly, the respondent was served on 13.08.2008. There

is no challenge to the finding that the application dated 15.09.2008 was within time, on account of three consecutive holidays.

5. The record further discloses that the respondent had filed a second application under Section 32(3) of the Act, on 10.10.2008 for necessary inquiry as contemplated under Section 32(3) of the Act. The petitioner also filed an application under Section 32(4) of the Act for stoppage of the proceedings and to direct eviction of the respondent. The learned Rent Controller after taking note of the order dated 26.02.2008 on the application under Section 18 of the Act and further considering the limitation for filing such application under Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Rules, 1969 (Rules, for short), came to the conclusion that both the applications were barred by limitation. In that view of the matter, the applications filed by the respondent were dismissed and the application filed by the petitioner, under Section 32(4) of the Act was allowed. That was as per order dated 09.09.2011.

6. The respondent challenged the said order before the learned District Judge, who came to the conclusion that the

applications filed by the respondent under Section 32(3) of the Act, were within limitation. The learned District Judge also found that the order passed by the learned Rent Controller under Section 18 of the Act, would not operate as res judicata and in that view, remitted the matter back to the learned Rent Controller for inquiry, which was subject matter of challenge before this Court.

7. It is submitted by the learned Senior Counsel for the applicant that the finding of the learned District Judge that the order under Section 18 of the Act, does not amount to res judicata, is incorrect. Secondly, it is submitted that in the face of a written agreement of lease, providing for rent of Rs.500/- per month, there was no occasion for the learned District Judge to remand the matter back. The stand of the respondent that the rent was Rs. 300/- per month, was cantankerous in nature. The learned Senior Counsel however fairly submits that the ground about the finding of the learned District Judge that the order under Section 18 of the Act, does not amount to res judicata being incorrect, was not argued during the hearing of the Writ Petition.

8. Shri Coutinho, the learned Counsel for the respondent submits that there is no finding recorded by the learned Rent Controller that the conduct of the respondent is of a cantankerous in nature. He submits that the Rent Controller had dismissed the applications filed by the respondent only on ground of limitation and once that finding was reversed, the appropriate course was to remit the matter back. He submits that there is no error apparent on the face of the record in the judgment of this Court.

9. I have carefully considered the rival circumstances and the submissions made. At the outset, it may be noted that the ground against the finding of the learned District Judge, that the order under Section 18 of the Act, operates as res judicata, being incorrect, was not pressed in service during the hearing of the petition. The record discloses that the learned Rent Controller, dismissed the applications filed by the respondent only on the ground of limitation. It is not in dispute that the first application dated 15.09.2008 was within time, having regard to the three consecutive holidays. Once, there was no finding that the conduct of the respondent was cantankerous in nature, in my considered view, the only course was to remit the matter back to the learned Rent Controller. In

such circumstances, no case for review is made out. However, it is clarified that the learned Rent Controller shall consider the application/s filed by the petitioner as well as by the respondent, on their own merits without being influenced by any of the findings of the learned District Judge. The learned Rent Controller shall decide the application/s, after taking into consideration the order passed under Section 18 of the Act. Rival contentions of parties are left open. The learned Rent Controller shall decide the application/s as expeditiously as possible and within a period of three months from the receipt of this order.

C.V. BHADANG, J.

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