

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 632 OF 2015

MR. JOHN MIRANDA. ... Petitioner
Versus
MR. PETER ALVARES. ... Respondent

Adv. C. Padgaonkar for the Petitioner.
Adv. Almeida Coutinho Cleofato Garrett Respondent

Coram:- C. V. BHADANG, J.

Date:- 24th February, 2017

P.C.:

The challenge in this petition is to the judgment and order dated 8/1/2016 passed by the learned District Judge in Rent Appeal No.31/2013. By the impugned judgment, the learned District Judge while allowing the appeal has set aside the order of the learned Rent Controller directing stoppage of the proceedings and eviction of the petitioner from the subject premises.

2. The brief facts are that the respondent had filed proceedings for eviction of the petitioner in which the respondent filed an application dated 6/7/2009 under section 32(4) of the Goa Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Rent Control Act, for short). The petitioner filed an

applciaiton for deposit of rent under section 32(3) of the said Act on 15/9/2008.

3. By an order dated 9/9/2011, the learned Rent Controller dismissed the application filed by the petitioner while allowing the application filed by the respondent directing eviction. The learned Rent Controller came to the conclusion that the application filed by the petitioner was beyond the period prescribed by Rule 7(1) of the Goa, Daman and Diu (Lease, Rent and Eviction) Control Act Rules 1969 (Rules, for short). Incidentally Rule 7 of the Rules provides a period of one month for deposit of the arrears of rent from the date on which the notice is served on the tenant for the first time.

4. In the present case indisputably the application was delayed by two days, which were holidays being second Saturday and Sunday.

5. The petitioner challenged the said order before the learned District Judge in Rent Appeal No.31/2013. The Appellate Court by the impugned judgement and order has remanded the application back to the Rent Controller. The learned Appellate Court has found that 13/9/2008 and 14/9/2008 were Saturday and Sunday on which dates there were holidays. The District Court also found that it was necessary to grant an opportunity to the

respondent to show that the default was not wilful. It is in these circumstances that the learned Rent Controller has been directed to decide the application filed by the petitioner on 6/7/2009 and the applications dated 15/9/2008 and 10/10/2008 filed by the respondent before the Rent Controller in accordance with law.

6. On hearing the learned counsel for the parties I find that all that the Appellate Court does is to send back the applications before the Rent Controller. That apart, the respondent has now filed an Affidavit stating that he does not dispute the quantum of the rent. It is submitted that the respondent is willing to deposit the rent for which an application is filed before the Civil Court which is pending. In any event, it would be for the learned Rent Controller to consider the fact that now the respondent is not disputing the quantum of rent while deciding the application. With this, the petition is dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-