

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.800 of 2017**

1. Rama Yeshwant Naik & sons
A partnership firm duly registered
under Indian Partnership Act, 1942,
Having its office at Ramsons Motor
House, Margao, Goa 403 601
Represented by their partner Rahul
Damodar Naik Major, married,
businessman, Resident of Margao, Goa .. Petitioners

Vs.

1. Dr. Mrs. Ratna Srikrishna Naik
major, widow of Srikrishna Naik
2. Mr. Mohin S. Naik
major, married, Engineer,
s/o Late Srikrishna Naik
3. Mr. Ritika M. Naik
major, married, Engineer,
w/o Mr. Mohin S. Naik
All resident of Vrundavan Building,
St. Francis X. Road, Mapusa,
Bardez, Goa. .. Respondents

Mr. A. R. Kantak, Advocate for the petitioners.

CORAM :- C. V. BHADANG, J.

DATE:- 5th December, 2017

ORAL ORDER :

The challenge in this petition under Article 227 of the Constitution of India is to the order dated 02/05/2014, passed by the Rent Controller, directing eviction of the petitioner from the suit shops under Section 22(2)(f) of Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act, for short) i.e. on the

ground that the petitioner/ tenant has ceased to occupy the suit premises for a continuous period of four months, without reasonable cause.

2. Brief facts are that the respondents had filed an application before the Rent Controller for eviction of the petitioner on the grounds as mentioned in Section 22(2) of the Act i.e. on the ground of arrears of rent, need of the landlord for personal occupation and the petitioner/ tenant having ceased to occupy the building for a continuous period of four months without reasonable cause. The Rent Controller has accepted the ground only under Section 22(2)(f) of the Act. That order has been confirmed in appeal by the learned District Judge by a judgment and order dated 29/06/2016. The tenanted premises consists of shop nos.4 and 5 situated on the ground floor of Vrundavan Building at Mapusa.

3. Shri Kantak, the learned Counsel for the petitioner has raised the following contentions :

(i) That the application was not in compliance with Rule 9 of Goa Buildings (Lease, Rent and Eviction) Control Rules, 1969 (the Rules, for short) in as much as the documents relied upon and considered by the Trial Court, namely the electricity bill Exh. AW1/10. and telephone bill Exh. AW1/11 were not listed in the application.

(ii) That the witnesses as listed in the application were not examined and some other witnesses were examined, who are not independent witnesses. This, according to the learned Counsel for the petitioner, is in breach of Rule 9(1)(e) of the Rules.

(iii) That the application filed by the respondents did not specifically contain a recital that the petitioner had 'ceased to occupy the building for a continuous period of four months without reasonable cause.' That although the learned District Judge has noticed this ground, it has not been dealt with.

(iv) That the evidence led is not sufficient to hold that the petitioner had ceased to occupy the suit premises for a continuous period of four months.

The learned Counsel has placed reliance on the decision of the Supreme Court in the case of ***M/s. Babu Ram Gopal and others Vs. Mathra Dass***; AIR 1990 SC 879 and the decision of this Court in the case of ***Peter Gonsalves Vs. Vijayanand Raghunath Hede and others***; CDJ 1994 BHC 231. Reliance is also placed on the decision of Delhi High Court in the case of ***R. K. Bhatnagar Vs. Smt. Sushila Bhargava and another***; AIR 1987 Delhi 363, in order to submit that non-payment of electricity charges cannot establish that the premises have not been used. Except this, no other contentions are raised.

4. I have considered the circumstances and the submissions

made and I do not find that any case for interference is made out.

5. The first ground of challenge is based on Rule 9(i)(e), which reads thus :

“9. Procedure to be followed by the Controller, the Rent Tribunal, the Appellate Board and the Administrative Tribunal in all enquiries and proceedings under the Act and the powers to be exercised by them.- (1) Save as expressly provided by or under the Act or these rules, all enquiries and other proceedings before the Controller or the Rent Tribunal shall be commenced by an application which shall contain the following particulars;
(a)
(b)
(c)
(d)
(e) A list of the applicant’s documents, if any or his witnesses or whether such witnesses are to be summoned or whether the applicant will produce them on the date of the hearing.”

6. It can, thus, be seen that the application is required to contain a list of the documents, if any, and the witnesses to be examined on behalf of the applicant. A perusal of the application does show that there were in all eight documents listed along with names of three witnesses. The contention however, is that these documents are not relied upon by the Courts below nor any of the three witnesses listed are examined. Without going into the

question whether the provisions of Rule 9(1)(e) are mandatory or not, it appears from the record that at no point of time any objection was raised to the production of the two documents namely the electricity bill Exh.AW1/10 and telephone bill Exh.AW1/11 when they were produced and exhibited before the Rent Controller. Similarly, there was no objection raised when the witnesses namely Tukaram Mandrekar (AW3) and Sayed Abdul (AW4) were examined before the Rent Controller, on the ground that their names were not listed as witnesses. What is significant is that this ground was also not raised either before the Rent Controller or before the learned District Judge in appeal. For this reason, I do not find that the petitioner can be allowed to raise the said ground for the first time in this petition. That apart the petitioner has also not shown as to in what manner it was prejudiced on account of the witnesses not listed in the application being examined.

7. In so far as the second ground is concerned, the respondents in paragraphs 12 and 15 of the application have stated thus :

“12. The applicants state that the suit shops are lying closed since January, 2001 and the respondent has not carried out any business activity from the suit shops since January, 2001.

15. The applicants state that now for almost a period of 3 years the suit shops are lying closed without the

respondent carrying on any business therein.”

8. The application under Section 22(2) of the Act was filed on 01/10/2003. A perusal of the recitals in paragraphs 12 and 15 would clearly show that the case made out by the respondent was that the petitioners had kept the suit shops closed without carrying on any business therein for almost a period of three years prior to filing of the application. The evidence led by the parties would clearly show that the petitioner was aware of the case and grounds made out for eviction. The pleadings as contained in the application have to be taken as a whole and have to be liberally construed particularly in view of the fact that there is nothing on record to suggest that the petitioner was unaware of the case made out or was taken by surprise. Mere absence of term that “the petitioner had ceased to occupy the building for a continuous period of four months without reasonable cause”, in my considered view, will not be sufficient to interfere with the concurrent findings by the Courts below. It is true that the learned District Judge has not dealt with this ground. However, considering the fact that the petitioner was aware of the case and the ground made out, I do not find that this would be sufficient to send the matter back to the learned District Judge for reconsideration.

9. Now coming to the third ground, I have carefully gone through the evidence led and the findings recorded by the learned

Rent Controller and the learned District Judge and I do not find that the findings suffer from any perversity, so as to require interference in the supervisory jurisdiction of this Court. The Courts below have relied upon the electricity bill and the telephone bill, which remained unpaid and which were paid only in the year 2014, in coming to the conclusion that the petitioner had ceased to occupy the building, within the meaning of Section 22(2) (f) of the Act. Reliance on the judgment in the case of **R. K. Bhatnagar** (supra), in my considered view, is misplaced. In the first place, the question whether the ground as urged is proved or not, would depend upon the facts and circumstances of each case. That apart, in paragraph 19 of the judgment in the case of **R. K. Bhatnagar** (supra), the Delhi High Court has *inter alia*, held that although non-consumption of electricity by a tenant over a long period, may not in itself be sufficient to warrant an inference of non-residence by the tenant, but it is certainly an important piece of evidence and it tilts the balance in favour of the respondent landlord, when the evidence is evaluated on the touchstone of preponderance of probabilities. In the present case, there is evidence of other witnesses, who are occupying adjacent shops, who have stated that the suit premises were kept closed. Thus, the evidence in the form of non-payment of electricity and telephone charges can certainly corroborate the oral evidence led on behalf of the respondents. Apart from this, what is significant is that if according to the petitioner, the petitioner was carrying on

the business of sale of spare parts in the suit premises, the petitioner could have well produced the extract of the shops and establishment register duly renewed and some invoices to show that the business was indeed being carried out. None of these documents are forthcoming on record. The learned Counsel for the petitioner during the course of arguments at bar submitted that the shops and establishment licence is not renewed for the last three years and the matter is pending before the concerned authorities. The learned Counsel also specifically submitted that there are invoices, which, however, are not produced either before the Rent Controller or even when the matter was pending before the learned District Judge. This, in my considered view, is sufficient to draw adverse inference against the petitioner.

10. The learned Counsel for the petitioner has submitted that the entire burden to establish the ground of non-user/ occupation was on the respondents and, therefore, non-production of these documents will be inconsequential. The contention cannot be accepted because the proof in an application of the present nature, essentially proceeds on preponderance of probabilities. The respondents did lead oral evidence and produced electricity and telephone bills to show non-occupation and the onus stood shifted on the petitioner to show that it continued to conduct the business of sale of spare parts in the suit shop premises. This Court, in the case of ***Peter Gonsalves and others*** (supra), after taking a note

of the decision of the Supreme Court in the case of **Babu Ram Gopal and others** (supra) has, *inter alia*, held in para 3 of the judgment that the tenant is required to prove in an application for eviction on the ground of cessation of occupation that not only he kept open the premises, but it was put to material use for conducting any business or profession. That evidence is not forthcoming. In that case, the matter was remanded basically on the facts as obtaining in the said case. Here is a case where both the Courts have concurrently found on appreciation of evidence that the petitioner had ceased to occupy the premises within the meaning of Section 22(2)(f) of the Act. The learned Rent Controller, after taking a note of the decision of the Supreme Court in the case of **Jogindar Pal vs. Naval Kishore Behal**; 2002(5) SCC 397, has held and to my mind rightly so, that equal treatment should be given to tenant and landlord and the Court should adopt reasonable and balanced approach while interpreting the Rent Control Legislation. Considering the overall circumstances, I do not find that any case for interference in the supervisory jurisdiction of this Court is made out. The petition is without any merit and is, accordingly, dismissed.

C. V. BHADANG, J.

SMA