

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 3 OF 2018

MARIA ANNETTE SITABAI LETICIA
CARVALHO.,

... Petitioner

Versus

GURUDAS M. HARMALKAR AND ANR.,

... Respondents

Mr. A. Talaulikar and Mr. Feriol Andrade, Advocates for the
petitioner.

Coram:- C. V. BHADANG, J.

Date:- 5th January 2018

P.C.

Leave to correct the date of the impugned order as mentioned
in prayer clause (a) granted. Necessary correction to be carried
out forthwith.

2. Heard Shri Talaulikar, the learned Counsel for the petitioner.
3. By this petition, the petitioner/ Judgment Debtor is
challenging the order dated 28/04/2017 passed by the Executing
Court below application Exh.11 filed by the petitioner.
4. The brief facts are that the petitioner claims to be a tenant of
the suit flat, which is belonging to the respondents/landlords.
The petitioner had filed a suit against the respondents seeking

injunction, restraining the respondents from evicting the petitioner otherwise than in due course of law. The respondents while resisting the suit, raised a counterclaim for possession on the ground that the petitioner is a trespasser. The learned Trial Court, by a judgment and order dated 21/09/2011, dismissed the suit while decreeing the counterclaim. As a result, the petitioner has been directed to hand over vacant and peaceful possession of the suit flat to the respondents. The petitioner unsuccessfully challenged the said judgment in appeal, which was dismissed on 20/10/2012. It appears that the petitioner filed an application for review of the said judgment being Civil Review Application No.7/2012, on the ground that there is a Revised Occupancy Certificate, which shows that the building in which the suit flat is situated, is more than 15 years old and, therefore, the provisions of Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control, Act, 1968 (Rent Act, for short) are applicable. The said Review Application has been dismissed by the Appellate Court on 01/08/2014. The learned District Judge, while dismissing the Review Application, has categorically held that the Revised Occupancy Certificate does not assist the petitioner, in order to demonstrate that there was any mistake or error apparent on the face of the record. It was further found that while dismissing the appeal, the provisions of the Act were taken into consideration and it has been held that the Rent Act does not apply to the buildings leased out for the first time after 20/04/1994, where the

monthly rent exceeds Rs.2,500/- and the building is used for residential purpose. In that view of the matter, the application for review came to be dismissed. The petitioner has not carried the matter any further and the decree of eviction has attained finality.

5. In Execution case seeking execution of the decree, the petitioner filed an application Exh.11 for summoning the Secretary of Village Panchayat, Socorro. That application has been dismissed by the impugned order dated 28/04/2017, which is subject matter of challenge in this petition.

6. It is submitted by Shri Talaulikar, the learned Counsel for the petitioner that the document i.e. Revised Occupancy Certificate has been taken on record by the Appellate Court in Review Application and as such, the review ought to have been allowed. It is not possible to accept the said contention for more reasons than one. In the first place, the order dismissing the Review Application is not subject matter of challenge in this petition. Even otherwise, as noticed earlier, the learned District Judge has considered the ground based on the applicability of the Rent Act and has negated the same. The decree passed by the Trial Court as confirmed by the Appellate Court, has attained finality. Thus, it would not be possible for the Executing Court to consider the said ground and to summon the Secretary of the

concerned Village Panchayat.

7. Shri Talaulikar, the learned Counsel for the petitioner also submits that the impugned order is challenged in appeal before the learned District Judge in Miscellaneous Appeal under Section 104 of C.P.C. However, during the course of arguments, it was fairly conceded that the impugned order would not be amenable to a challenge under Section 104 of C.P.C. In the circumstances, the order dismissing the application Exh.11, passed by the Executing Court, does not suffer from any infirmity. The petition is without any merit and it is, accordingly, dismissed.

8. At this stage, Shri Talaulikar, the learned Counsel for the petitioner, on instructions, submits that a period of two months may be granted to the petitioner to vacate the suit premises. In view of the fact that the petition is being dismissed in limine, without issuing a notice, it would not be appropriate for this Court to grant time to the petitioner to vacate unilaterally behind the back of the Decree Holder. However, it would be open to the petitioner to make such a request before the Executing Court accompanied by an undertaking to the Executing Court that the petitioner shall vacate the suit flat within a period of two months.

If such an application is filed along with properly executed undertaking, the Executing Court shall pass appropriate order after hearing the parties.

9. Parties to act on the authenticated copy of the order.

C. V. BHADANG, J.

SMA