

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 317 OF 2011**

1. Smt. Rosy Manwindra,
(deceased through Lrs)
 2. Shri Winsor alias Willy Manwindra,
(deceased through Lrs)
 - (a) Mrs. Fatima Manwindra,
Major in age,
Widow of Shri Winsor Manwindra,
 - (b) Sirina Manwindra,
Minor daughter of late
Winsor Manwindra,
Represented by her mother and natural guardian
Mrs. Fatima Manwindra,
Both r/o Shop no.4, Tilve Building,
Dandi, Erasmo Carvalho Street,
Margao-Goa.
- ... Petitioners

V e r s u s

Shri Audhut Govind Tilve,
Major of age,
r/o H. No.57, Dando,
Erasmo Carvalho Street,
Margao- Goa.

..... Respondent.

Shri A. D. Bhobe, Advocate with Adv. Ms. S. Bhobe for the Petitioners.

Shri C. A. Coutinho, Advocate for the Respondent

CORAM: C. V. BHADANG, J.
DATE: 21st August, 2018.

Oral Judgment:

The challenge in this petition is to the order dated 18/1/2011 passed by the Administrative Tribunal in Eviction Appeal no.12/2003. By the impugned order, the learned Administrative Tribunal has allowed an application filed by the respondent under section 32 (4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1965 (Act, for short) directing stoppage of the proceedings and eviction of the petitioners from the suit premises shop no.4 on the ground floor of a building situated at Margao.

2. The respondent/landlord filed Eviction proceedings against now deceased Rosy Manwindra and her son Winsor alias Willy Manwindra (since deceased) for their eviction on the ground of arrears of rent, subletting and the tenant ceasing to occupy the suit premises. That application was filed somewhere in the year 1985 . The case made out in the application was that the original tenant was in possession of the suit shop on an agreed rent of Rs.275/- per month. It appears that during the pendency of the said application, the respondent filed an application under section 32(4) of the Act on the ground that the tenants had failed to pay the arrears of rent and were thus liable to be summarily evicted. The Rent Controller vide order dated 24/2/1987 allowed the application. Feeling aggrieved the original tenant filed an Eviction Appeal bearing no.28/1987 before the Administrative Tribunal.

That appeal came to be allowed on 13/4/1992 and the matter was remitted back to the Rent Controller for disposal in accordance with law. The main application for eviction was dismissed by the Rent Controller on 26/11/2002 holding that none of the three grounds on which the eviction was sought were established. Feeling aggrieved by the said order, the respondent filed Eviction Appeal no.12/2003 before the Administrative Tribunal. It appears that on account of death of the original tenant, the present petitioners were brought on record (as respondents in the appeal before the Administrative Tribunal) in the year 2008. The respondents filed an application on 31/3/2009 before the Administrative Tribunal for deposit of the arrears of rent from October 2018 to April 2009 which application was allowed on 21/4/2009. The petitioners, however, deposited the rents due only on 3/9/2009 and failed to deposit the rent for the subsequent period i.e. from May 2009 onwards. It was in these circumstances that the respondents herein filed an application under section 32(4) of the Act on 30/3/2010 again seeking stoppage of the proceedings and eviction of the petitioners on the ground that they had failed to pay the arrears of rent.

3. The petitioners filed their reply and resisted the application. However, the quantum of rent and the arrears were not disputed. The only contention raised was that the petitioner no.1 was continuously required to look after her

daughter i.e the petitioner no.2 and her infant son and was required to incur heavy medical expenditure on the treatment of the petitioner no.2. The petitioners undertook to diligently pay and deposit the rent to the landlord or to deposit the same in the Court as directed by the Court. The petitioners also showed willingness to pay/deposit the arrears of rent for the period from May 2009 to April 2010 amounting to Rs.3300/-. The Administrative Tribunal by the impugned order has allowed the application filed by the respondents, which is subject matter of challenge in this petition.

4. I have heard Shri Bhobe, the learned counsel for the petitioners and Shri Coutinho, the learned counsel for the respondent. With the assistance of the learned counsel for the petitioner. I have gone through the record and the impugned order passed by the Administrative Tribunal.

5. Shri Bhobe, the learned counsel for the petitioners has placed reliance on the decision of this Court in the case of **Datta Anant Ghadi Vs. Smt. Guilermina Silveira and others 2000(1) Goa L. T.39**, in order to submit that although section 32(4) of the Act is couched in a language which may appear to be mandatory, the Division Bench of this Court in the case of **Datta Anant Ghaddi (supra)** has held that there is discretion vesting in the Rent Controller/appellate or revisional authority to direct stoppage of the

proceedings and the consequent eviction of the tenant. It is submitted that it is not that in the case of every default (which may be unintentional or where the tenant is precluded from circumstances beyond his control in depositing the rent) that the tribunal can direct summary eviction of the tenant under section 32(4) of the Act. The learned counsel has specifically relied upon the observations of this Court in the case of **Roque Antonio Judas Tadeu Caetano Ribeiro Vs. Angelo Caswiano Neves e Souza and 4 others 1989 (2) Goa L.T. 313.**, which have been relied upon by the Division bench in the case of **Datta Ghadi (supra)**. It is submitted that the relevant consideration for exercising the power is to see whether the default is for a short period or a long period, whether it is willful or unintentional, whether the default is stray or persistent and whether the payment was made at the earliest opportunity or after cantankerous contest. It is submitted that the Administrative Tribunal has not considered this aspect while directing stoppage of the proceedings and eviction of the petitioners. It is pointed out that section 32 of the Act, is intended to secure payment, on pain of the tenant being precluded from contesting the proceedings and being required to put the landlord in possession and it is not intended to serve as an order of eviction under section 22 of the Act.

6. In so far as the failure of the petitioners to produce medical evidence

about the illness of the petitioner no.2, it is contended that the Tribunal has not come to the conclusion that the cause shown by the petitioners about the illness of the petitioner no.2 is false. It is thus submitted that the exercise of discretion by the Tribunal in directing eviction of the petitioners is tainted with perversity which requires interference. The learned counsel was at pains to point out that since after passing of the impugned order and during the pendency of the present petition, the petitioners have been punctually depositing the rent before this Court.

7. On the contrary, it is submitted by Shri Coutinho, the learned counsel for the respondent that the conduct of the petitioners and their failure to deposit the arrears of rent is willful and the Tribunal is right in exercising the discretion in favour of the respondent, directing the eviction of the petitioners. Shri Coutinho, the learned counsel for the respondent has placed reliance on the decision of the Supreme Court in the case of **E. Palanisamy Vs. Palanisamy (D) by Lrs. And others, AIR 2003 SC 153**, in order to submit that the subsequent deposit of the rent is of no avail and the petitioners cannot claim any benefit out of such deposit. Specific reliance is placed on para 5 of the judgment in the case of **E. Palanisamy (supra)**. Reliance is then placed on yet another decision of the Supreme Court in the case of **Aero Traders Pvt. Ltd. Vs. Ravinder Kumar Suri AIR 2005, SC**

15., in order to submit that in respect of similar provisions contained in the Delhi Rent Control Act, providing for striking off the defence of the tenant, the Supreme Court had upheld the order of the High Court, restoring the order of the Rent Controller, striking off the defence of the tenant. Lastly reliance is placed on the decision of this Court in the case of **Smt. Sumati K. Shirodkar Vs. Miss Terezinha Serrao and others**, MANU/MH/0705/1994, in order to submit that the default in payment under section 32(4) renders the tenant liable for eviction, even during the pendency of the proceedings and the Court can exercise its discretion in condoning the delay in default of payment of rent only when the delay is properly explained. It is submitted that this Court in the case of **Sumati Shirodkar (supra)** has upheld the order of eviction passed under section 32 (4) of the Act.

8. I have carefully considered the rival circumstances and the submissions made. In the present case, the quantum of rent as also the factum of arrears is not in dispute. The only ground for justifying the non payment was that the petitioner no.2 was ailing and the petitioner no.1 was required to look after the petitioner no.2 and her infant son and was required to incur expenditure on her medical treatment. Except this, there was no other ground made out for showing sufficient cause either for non payment of rent or a cause against stoppage of proceedings and eviction. A perusal of the impugned order

shows that the petitioner had sought time to produce documents in support of the illness of the petitioner no.2 . However, no such documents were ever produced. This is one of the reasons stated by the Administrative Tribunal apart from others, while directing eviction. It is not possible to accept that the tribunal having not come to the conclusion that the case about illness of the petitioner no.2 was false, ought not to have directed eviction of the petitioner. The question is not whether the case made out was false, or otherwise. The question is whether the cause shown was substantiated.

9. Now coming to the merits of the application, the petitioners have produced a chart showing deposit of arrears made in para 12 of the petition which is as under:

03/09/2009	427/R-09-10	Rs.22,000/-	October 2002 to April 2009
30/04/2010	76/R-10-11	Rs.3,3,00/-	May 2009 to April 2010
10/08/2010	345/R-10-11	Rs.1,100/-	May 2010 to August 2010
30/08/2010	375/Rent/10-11	Rs.550/-	September 2010 to October 2010
18/10/2010	508/R-10-11	Rs.275/-	November 2010
24/11/2010	583/R/10/11	Rs.275/-	December 2010
20/12/2010	645/R/10/11	Rs.275/-	December 2010
18/01/2011	727/R/10-11	Rs.275/-	January 2011
23/02/2011	787/R/10-11	Rs.275/-	February 2011

10. The record discloses that after the petitioners put in their appearance before the Administrative Tribunal they filed an application on 31/3/2009 for permitting them to deposit the arrears of rent from September 2002 to April 2009 i.e. close to six and half years. That application was allowed on 21/4/2009. However, the petitioners complied with the said order by depositing the arrears of rent of Rs.22,000/- only on 3/9/2009. It can thus be seen that the very first deposit of the arrears was made approximately after five months of the order passed on 21/4/2009. In fact it was the petitioners who had filed an application on 31/3/2009 seeking permission to deposit the arrears. However, the petitioners did not immediately comply with the order dated 21/4/2009 and the arrears were deposited only on 3/9/2009. The record further discloses that the arrears on and from May 2009, to April 2010 i.e. for a the period of one year were deposited on 30/4/2010. Thus, even after the belated compliance with the order dated 21/4/2009, the petitioners did not deposit any rent till 30/4/2010. Thereafter the rent for the period from May 2010 to August 2010 was deposited on 10/8/2010 and lastly the rent for the month of September 2010 and October 2010 was deposited on 30/8/2010. It is true that the subsequent payment is made well before the close of the month. However the fact remains that the initial deposit on 3/9/2009 was for a substantially long period from October 2002 to April 2009 and even the next period of arrears is of one year from May 2009 to April 2010 followed

by a period of four months from May 2010 to August 2010. The question is whether in such circumstances, any fault can be found with the exercise of the discretion by the Tribunal in directing eviction of the petitioners.

11. It is true that it is not mandatory for the Rent Controller and the appellate/revisional authority to direct eviction, once there is a default in payment/deposit of the rent. There is a discretion, albeit, a judicial discretion vesting in the Rent Controller or the appellate/ revisional authority to direct such eviction depending upon facts and circumstances of each case. The Division Bench in the case of **Roque Antonio Judas (supra)** has inter alia held that the relevant considerations for exercising the discretion is to see (i) whether the default is for a short period or a long period , (ii) whether the default is willful or unintentional, (iii) whether the default is stray or persistent (iv) whether the payment was made at the earliest opportunity or after cantankerous contest or (v) whether the default was bonafide or to harass the landlord. In short, what has to be found is whether in the facts and circumstances of the case there was reasonable cause for non payment or deposit of rent within such time as is prescribed. Applying these principles to the facts as obtaining in the present case, would show that the first two defaults can indeed be said to be for a long/fairly longer period. It was contented by the learned counsel for the petitioner that the default in so far as

the period from October 2002 to April 2009 would stand condoned and cannot be acted upon once the petitioners were permitted by the order dated 21/4/2009 to deposit the rent. In my considered view the contention cannot be accepted. The fact that the application filed by the petitioner was allowed would not tantamount to the default being condoned. That apart, the petitioners took more than four months to comply with the order dated 21/4/2009 and even after that, there were arrears of rent from May 2009 to April 2010 which were paid on 30/4/2010. Although the petitioners claim that the default is not willful and is unintentional (on the ground of the petitioner no.1 incurring expenditure over the treatment of the petitioner no.2), the petitioners have failed to substantiate the said ground. The default also cannot be said to be stray default and the payment cannot be said to be made at the earliest opportunity. The test as laid down by the Division Bench in the case of **Datta Ghadi** is whether in the facts and circumstances of the case there was a reasonable cause for non payment or the deposit of the rent within such time as is prescribed. The petitioners in my considered view have failed to establish any such reasonable cause.

12. The suit premises are commercial premises which the petitioners are occupying on rent of Rs.275/- per month. The respondent has been trying to get back the possession of the suit premises from the year 1985. I have

carefully gone through the impugned order passed by the Administrative Tribunal and I do not find that the exercise of discretion by the Tribunal can be said to be tainted with perversity.

13. In so far as the subsequent deposit of rent during the pendency of the petition is concerned the learned counsel in the respondents has placed reliance on para 5 of the judgment of the Supreme Court in the case of **Palanisamy** which reads thus :

Mr. Sampath, the learned counsel for the appellant argued that since the appellant-tenant had deposited the arrears of rent in Court, it should be taken as compliance of Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the Court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the Court for permission to deposit the arrears of rent. Since there is a substantial compliance of Section 8 in as much as the arrears of rent stand deposited in Court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the

tenants through the relevant statutes can be enjoyed only on the basis of strict compliance of the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance of the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in [Kuldeep Singh v. Ganpat Lal & Another](#) reported in 1996 (1) SCC 243 and [M.Bhaskar v. J. Venkatarama Naidu](#) reported in 1996 (6) SCC 228.

It can thus be seen that the similar contention about the tenant subsequently paying the rent had not found favour with the Hon'ble Supreme Court. Although the judgment in the case of **E.Palanisamy** was delivered in the context of the provisions of section 8 (5) of the Tamil Nadu Building (Lease and Rent Control) Act 1960 the principles as aforesaid would apply with equal force.

14. It is now well settled that in the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, this Court would be slow in

interfering with the discretionary orders of the present nature, unless and until the exercise of discretion is tainted with perversity. In view of the above the petition is without any merit and is accordingly dismissed. Rule is discharged. The petitioners are granted six months time to vacate the suit premises. The amounts deposited before this Court and the Rent Controller along with interest, if any shall be paid to the respondents.

C. V. BHADANG, J.

Ap/