

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 151 of 2018**

1. Smt. Jijabai Namdev Satardekar,
widow of late Shri Namdev
Satardekar, aged 70 years, widow,

2. Smt. Anita Satardekar, aged 57 years,

Both residing at Flat No. FF4, Solsons
Court Co-operative Housing Society
Ltd., near Casino Motels, Porvorim,
Bardez, Goa.

3. Smt. Sudha Satardekar, aged 37,
housewife,

4. Shri Jagdish N. Satardekar alias
Vasudev N. Satardekar, aged 52 years,
service,

Both residing at Flat No. S-3, 2nd floor,
Solsons Residency, near SBI, Varsha
Colony, Porvorim, Bardez, Goa.

.... Petitioners

Versus

Mr. Luis Sales de Andrade e Souza,
residing at 6/33, Arrarim, Sonarbhat,
Saligao, Bardez, Goa.

.... Respondent

Mr. Gaurish Agni with Mr. Raunak Kantak and Mr. Tanmai
Gawas, Advocates for the Petitioners.

Mr. M.B. Da Costa, Senior Advocate with Ms. Karishma Custa
Betquecar, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

Reserved on : 20th June, 2018

Pronounced on : 1st February, 2019

JUDGMENT :

Whether the Appellate Board constituted under Section 41(1) of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 (Rent Act, for short) has power to review its own judgment and order and if yes, whether the Appellate Board, by the impugned order, was justified in reviewing its earlier order dated 19.07.2014, thereby granting an application under Section 32(4) of the Rent Act, filed by the respondent, is a question, which falls for determination in this petition.

2. The brief facts necessary for the disposal of the petition, may be stated thus:

By an Agreement dated 10.11.1956, Joao da Andrade Souza, the paternal uncle of the respondent, Luis Souza (original applicant), let out the suit premises (more specifically described in para 1 of the application), to now deceased Namdeo Parsuram Satardekar, on a monthly rent of Rs.15/- for commercial purpose. The lease was subject to a specific condition that Namdeo Satardekar, would not sublet the suit premises, without the written consent of the landlord.

The original tenant Namdeo expired on 23.03.1972 and the petitioners are his heirs and successors. The respondent, Luis Souza filed an application before the Rent Controller, for eviction of the petitioners on the ground that the petitioners have sublet the suit premises to one Eustaqcio Sequeira, son of Raymond Sequeira, on a monthly rent of Rs.1,000/- and who was carrying on business under the name and style as “Hysons” and dealing in retail sales and service of household electronic goods.

3. The petitioners, by their reply, denied that the suit premises have been sublet as alleged and also denied the allegations about non-payment of rent from the year 1987. It was contended that the petitioners were regularly sending rent by money order, which were not accepted by the respondent.

4. On 03.08.2009, the petitioners raised an objection before the Rent Controller stating that the Eviction Application was liable to be dismissed for failure of the respondent to issue a statutory notice claiming arrears of

rent, before filing of the petition as required under the provisions of the Rent Act and in view of the decision of the competent Civil Court dated 29.07.2005, in Regular Civil Suit No. 79/1997/B, holding that there is no subletting, which is confirmed in Regular Civil Appeal No. 99/2005 decided on 11.07.2007.

5. The learned Rent Controller rejected the objection on 05.04.2010. Feeling aggrieved, the petitioners challenged the same, in Eviction Revision Application No.7/2010 before the Administrative Tribunal (which was then authorised to hear Revision Applications against the order of the Rent Controller). Subsequently, by virtue of the Amendment Act 14 of 2013, the jurisdiction to hear appeals/revision applications against the order of the learned Rent Controller was conferred on the Appellate Board, constituted under Section 41(1) of the Rent Act. On account of this, the Revision Application came to be transferred to the learned District Judge at Panaji, who is acting as an Appellate Board and it was registered as Rent Revision No.24/2013.

6. On 02.04.2014, the respondent filed an application before the Appellate Board (presided over by Shri Irshad Agha), purportedly under Section 32(4) of the Rent Act, praying that the proceedings be stopped and the petitioners be directed to hand over the vacant possession of the suit premises to the respondent. The petitioners filed their reply and claimed that the rent has been paid upto date and there was no default on the part of the petitioners. The petitioners also produced the challans, evidencing the deposit of rent for the period as alleged in para 3 of the application filed by the respondent.

7. The Appellate Board (presided over by Shri Irshad Agha), by an order dated 19.07.2014, dismissed the application holding that the rent has been deposited from time to time and the petitioners cannot be said to be cantankerous tenants. Thus, the learned Appellate Board refused to exercise powers under Section 32(4) of the Rent Act.

8. On 26.08.2014, the petitioners filed an application for review of the order dated 19.07.2014, which was registered as Review Application No.5/2014. The learned Appellate Board (presided over by Ms. Sherin Paul), by an order dated 05.12.2017, has allowed the application, thereby stopping the proceedings for non-payment of rent and directing eviction of the petitioners. Feeling aggrieved the petitioners are before this Court.

9. I have heard Shri Gaurish Agni, the learned Counsel for the petitioners and Shri D'Costa, the learned Senior Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

10. Shri Agni, the learned Counsel for the petitioners has raised two contentions. Firstly, it is contended that the Appellate Board is not clothed with a power of review. It is submitted that a power of review has to be specifically conferred and unless and until such a power is conferred, the Appellate Board was not justified in entertaining the

application for review. Secondly, it is submitted that even on facts, no case for review of the earlier order was made out.

11. Elaborating the submissions further, it is submitted that under Section 47 of the Rent Act, every order passed in appeal or revision, is final. It is submitted that this is indicative of the fact that the Appellate Board, would not have any power to review its own judgment or order. It is submitted that the power of review is not inherent and is a creature of statute and unless conferred specifically or by necessary implication, cannot be assumed by any Court or authority. It is submitted that such a power of review has not been conferred either specifically and cannot be inferred by necessary implication in the present case. It is submitted that at the highest, such a power of review is only for correcting typographical or arithmetical errors or errors arising out of accidental slip or omission, which the learned Counsel calls a “procedural review”. It is submitted that a review on merits, on the ground of there being an error apparent on the face of record, is not available to the Appellate Board. The learned Counsel has taken me through Sections 46 and 47 of the Rent

Act, in order to submit that they do not confer any power of review on the Appellate Board.

12. The learned Counsel has then referred to the provisions of the Administrative Tribunals Act, 1965 (Act of 1965, for short). It is submitted that the power of review conferred on the Administrative Tribunal, under Section 10 of the Act of 1965, is limited. The learned Counsel was at pains to point out that the words “for any other sufficient reason” as contained in Section 10 of the Act of 1965, have to be read *ejusdem generis*. It is submitted that the power of review as conferred under Section 10 of the Act of 1965 is not extended and cannot be read into appeals/revision applications under the Rent Act, as the Rent Act would be a special legislation, which would override the provisions of the Act of 1965 in this regard. It is submitted that in fact, the Rent Act expressly or by necessary implication excludes the power of review.

13. It is submitted that the notification of the year 2013 does not extend the powers of the Administrative Tribunal to the District Court and the Act of 1965 is not

saved. He, therefore, submits that the Appellate Board was in error in entertaining the application for review.

14. Insofar as merits are concerned, it is submitted that even otherwise, no case for review of the order was made out. The learned Counsel has referred to para 16 of the reply filed to the application in order to contend that all challans, except for the month of October 2008 and December 2012, were submitted to the Court. Subsequently, even the challans for the months of October, 2008 and December, 2012 were traced and were produced before the Court. It is thus submitted that no case for review was made out.

15. On behalf of the petitioners, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Vikram Singh alias Vicky Walia & Another Vs. State of Punjab & Another (2017) 8 SCC 518** and the decision of this Court in the case of **Shri Govind Mahadev Bandekar Vs. Smt. P. Cusum @ Jankibai & Others 2000(4) Bom. C.R. 694.**

16. On the contrary, Shri D'Costa, the learned Senior Counsel for the respondent has supported the impugned order. It is submitted that the Administrative Tribunal has power of review. It is submitted that review is a continuation of the appeal or revision and thus, such a power has to be conceded to an appellate or a revisional authority. The learned Senior Counsel has referred to section 58(2) of the Rent Act, read with Rules 9(3) and 9(4) of the Rules framed thereunder. It is submitted that the transfer of the appeals/revisions to the District Judge is not as a "Persona Designata", but as a Court. It is submitted that in as much as the Administrative Tribunal had a power of review, it cannot be accepted that the District court, (where the appeals/revision applications are transferred by virtue of the amending Act 14 of 2013), would not have such a power. The learned Senior Counsel in this regard has placed reliance on the notification dated 02.01.1982 bearing no. 77/69-V in order to submit that the Appellate Board would have jurisdiction to review its own judgment and order.

17. As regards merits, it is submitted that the application filed by the respondent under section 32(4) of the Rent Act is on two counts namely, irregular payment of rent and non-payment/deposit. It is submitted that the Appellate Board rightly found that, earlier a wrong question for determination, having been framed, there was an error apparent on the face of record. He therefore submits that, no case for interference is made out.

18. On behalf of the respondent, reliance is placed on the decision of the Supreme Court in the case of **Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5**, the decision of this Court in the case of **P.T. Gandhi Vs. Smt. Manjulaben Maganlal Shah 1988 (3) Bom. C.R. 191** and the decision of the Kerala High Court in the case of **Poulose Mathai Vs. A.J. Joseph & Others, AIR 1973 Ker 214**.

19. I have carefully considered the circumstances and the submissions made. Section 41(1) of the Rent Act, (prior to its amendment by Act No. 14 of 2013), which is relevant for

the purpose reads thus:

“41. Authorities.— (1) The Administrator may by notification in the Official Gazette, constitute for any local area an Appellate Board and a Rent Tribunal consisting of one or more persons as may be prescribed for the purpose of this Act:

Provided that the Administrator may, by notification in the Official Gazette, entrust the powers, functions of duties of an Appellate Board to the Administrative Tribunal.”

By virtue of the proviso to Section 41(1) of the Rent Act, the power to hear appeals and revision applications, was conferred on the Administrative Tribunal.

20. By Section 7 of the Amendment Act 14 of 2013, the proviso to Section 41(1) of the Rent Act has been deleted. The Administrator by a notification dated 30.09.1969 has appointed the Senior Civil Judge as the Rent Controller and the District Judge as the Appellate Board. That notification reads thus:

“In exercise of the powers conferred by sub-section (1) of Section 41 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control

Act, 1968 (Act No. 2 of 1969), the Administrator of Goa, Daman and Diu is pleased to constitute every Civil Judge, Senior Division, to be the Rent Tribunal within his respective local jurisdiction and the District Judge, Panaji to be the Appellate Board for the purposes of the said Act.”

21. The learned Senior Counsel for the respondent has relied upon the judgment in the case of **Mukri Gopalan** (supra) in order to contend that the District Judge while exercising powers as an Appellate Board, does not act as a “Persona Designata”. This aspect is not disputed by the learned Counsel for the petitioners. The learned Counsel for the petitioners claimed that it is not even the case of the petitioners that the District Judge while acting and exercising powers as an Appellate Board under the Rent Act, acts as a “Persona Designata”. Thus, it is not necessary to examine the said aspect. Thus, we proceed on the footing that the District Judge does not act as a “Persona Designata”. However, that alone may not be decisive. Merely because the District Judge does not act as a “Persona Designata”, it would not lead to the conclusion that the District Judge while acting and exercising powers as an Appellate Board, would be clothed with all the

powers of an Appellate Court governed by the Code of Civil Procedure (Code, for short). It is now well settled that there is no inherent power of review, in a Court or a Tribunal or an authority. Power of review has to be conferred specifically or by necessary implication. It is not necessary to multiply authorities on the point. However, this has been so held by the Supreme Court as far back as in the year 1970 in the case of **Patel Narshi Thakershi & Others Vs. Shri Pradyumansinghji (1971) 3 SCC 844.**

22. The learned Senior Counsel for the respondent contended that review is a continuation of an appeal. Reliance for the said purpose is placed on the decision of the Kerala High Court in the case **Paulose Mathai** (supra). The contention in my considered view cannot be accepted. In the case of **Paulose Mathai** (supra) before the Kerala High Court, the petitioner had filed two appeals in forma pauperis i.e. as an indigent person. The appeals were dismissed. The petitioner filed an application for review of the judgment. It was in such circumstances held that a petition for review of a judgment passed in an appeal must be considered, to be a

continuation of the appeal itself, which was filed in forma pauperis and therefore, on grounds both, of sound reason and obvious justice, such a petition must be held to be maintainable without payment of Court fees. It can thus be seen that only for the limited purpose of permitting the review to be filed in forma pauperis, the application for review was considered as a continuation of the appeal, which itself was entertained in forma pauperis. Thus, the case clearly turned on its own facts.

23. The issue essentially, has to be examined in relation to the relevant provisions of the Rent Act. Before doing that, it is necessary to state that the issue in the present petition is essentially about the jurisdiction and powers of the Appellate Board to review its own order. It is not necessary to examine whether, the Administrative Tribunal had such a power. This is because, after the deletion of the proviso to section 41(1) of the Rent Act, the revision application was transferred to the Appellate Board and the impugned order is passed on an application for review by the Appellate Board.

24. Let us now examine the relevant provisions of the Rent Act and the Rules framed thereunder.

Section 41 of the Rent Act provides for the procedure to be followed by the Controller, Rent Tribunal, the Appellate Board or the Administrative Tribunal, in an inquiry proceedings under the Act. The said section provides that the procedure shall be such “as may be prescribed”. The word “prescribed” is defined under Section 2(m) of the Rent Act, meaning prescribed by the Rules made under the Rent Act. The Rule making power is conferred on the Administrator by Section 58 of the Rent Act and as per Section 58(2)(a), such Rule may provide for the procedure to be followed and the powers that may be exercised by the Controller in performance of their functions under the said Act.

It can thus clearly be seen that the procedure to be followed by the Appellate Board is as prescribed by the Rules. Rule 9 of the Rules is relevant for the purpose. Rule 9(3) of the Rules provides that the Appellate Board in deciding the appeals under the provisions of the Act, shall have the same powers and shall follow the same procedure, as is provided

for deciding appeals, under the Civil Procedure Code, 1908. It is necessary to note, at this stage, that Rule 9(2) of the Rules provides that in all inquiries, the Rent Tribunal shall exercise the same powers as the Mamlatdar, while Rule 9(4) prescribes that the Administrative Tribunal shall follow the procedure provided for, in this behalf, in the Goa, Daman and Diu Administrative Tribunal Act, 1965. It can thus be seen that the procedure that is expected to be followed by the Rent Controller, the Appellate Board and the Administrative Tribunal is distinct and is found in Rule 9(2), 9(3) and 9(4) of the Rules respectively.

25. Presently we are concerned with the procedure to be followed by the Appellate Board as prescribed by Rule 9(3) of the Rules, which says that the Appellate Board shall follow the procedure for deciding the appeal under the Code. Once the Rules provide that the procedure as provided in Civil Procedure Code shall apply, it would include the powers under Order XLVII of the Code for review of its own judgment and order. There is no reason to exclude the power of review, as provided under Order XLVII, once Rule 9(3) of the Rules

says that the Appellate Board shall follow the same procedure as provided for in deciding appeals under the Code.

26. A useful reference may be made at this stage to the decision of the Division Bench of this Court in the case of **P.T. Gandhi** (supra). In that case, the respondent/landlord had filed a suit against the appellant/tenant for possession of the suit premises, on the ground of bonafide personal occupation. The suit was decreed on 31.08.1978 and the appeal preferred by the tenant was dismissed on 03.06.1981. The tenant filed an application seeking review of the judgment of the Appellate Court, on the ground that shortly thereafter, it was disclosed that the respondent had been in occupation of another flat. The Appellate Board by a judgment and order dated 02.11.1985 rejected the review petition on the ground that the same was not maintainable. While holding so, the Appellate Board relied upon the decision of this Court in the case of **M/s National Hotel & Others Vs. Mrs. Rukayabai & Others AIR 1985 BOM 403**. Feeling aggrieved, the tenant approached the High Court under Article 277 of the Constitution of India. The learned Single Judge before whom

the petition was placed found that the law laid down in the case of **M/s National Hotel** (supra) was not applicable to the case governed by Rule 8 of the Rules framed under the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 and the observations in that case were obiter or could be said to be not relevant to the issue decided in the case of **M/s National Hotel** (supra). In such circumstances, the matter was referred to the Division Bench for deciding the question whether, in view of the provisions contained in Rules 8 and 9 of the Bombay Rent Control Rules, 1948, the provisions relating to review are applicable to the suits and proceedings other than those referred to in Rules 5 and 7 of the Bombay Rent Control Rules. The Division Bench ultimately held that the reference to Rules 8 and 9 of the Bombay Rent Control Rules in the case of **M/s National Hotel** (supra) was wholly uncalled for and the case of **M/s National Hotel** (supra) was covered by Rules 5 and 7. After taking note of Rule 8 of the Rules, which says that the Court of the Small Cause has to follow, "as far as may be and with necessary modification", the procedure prescribed for the Court of the first instance by the Code of Civil Procedure, it

was held that the Appellate Board would be having power of review (under Rules 8 and 9 of the Rules).

27. It can thus clearly be seen that inasmuch as Rule 9 of the Rules framed under the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, the Court while hearing the appeals was required to follow the procedure prescribed in the Code of Civil Procedure. Therefore, the Division Bench held that the Appellate Court would have a power of review. In my considered view, the basis on which it was so held shall apply on all force, in the present case, in as much as the procedure to be followed by the Appellate Board is as prescribed by the Rules, which in turn provide that the Appellate Board shall follow the procedure as prescribed under the Code, which obviously includes the powers of review under Order XLVII of the Code.

28. At this stage, it is necessary to make a brief reference to the decision of this Court in the case of **Govind Mahadev Bandekar** (supra), on which, reliance is placed on behalf of the petitioners. In that case, the question was

whether, the application for review was maintainable before the Rent Controller, which was answered in the negative. It can be seen that the question about the power and procedure to be followed by the Appellate Board, did not fall for determination in that case. As noticed earlier, Rule 9 provides for separate procedure to be followed by the Rent Controller, Appellate Board and the Administrative Tribunal. At the cost of repetition, it needs to be stressed that while the Rent Controller is obliged to follow the procedure as per the Mamlatdar Court's Act, the Administrative Tribunal has to follow the procedure as prescribed in the Administrative Tribunals Act. The procedure of the Appellate Board is distinct and is as prescribed under the Code.

29. At this stage, it is necessary to deal with the submission on behalf of the petitioners based on Section 47 of the Rent Act, which reads thus:

*“47. Powers of appellate and revisional authorities.
— Any appellate or revisional authority under this Act may confirm, modify or rescind the order in appeal or revision or its execution or may [remand the case for disposal with such directions as*

deemed fit or] pass such other order as is legal and is in accordance with the provisions of this Act:

Provided that no order shall be varied in division unless an opportunity has been given to the interested parties to appear and be heard:

Provided further that every order passed by the Authorised Officer, the Controller or the Rent Tribunal shall be final, unless varied in appeal or revision and every order passed in appeal or revision shall be final.

(Emphasis supplied)

30. On the basis of the second proviso to Section 47 of the Rent Act, it is contended on behalf of the petitioners that finality having been attached to the orders passed in an appeal or revision, the power of review stands excluded by necessary implication. In my considered view, the contention cannot be accepted. What the second proviso to Section 47 of the Rent Act provides is that an order passed in an appeal or revision shall be final, which would mean that it would not be open to challenge before any higher authority such a provision attaching finality would only mean that it is not amenable to be challenged in a hierarchical manner under the Act. It is necessary to note that order passed in a review

application would also be as much, an order as, passed in an appeal or revision and therefore, the proviso, in my considered view, cannot exclude a power of review. In such circumstances, I hold that the Appellate Board constituted under Section 41 of the Rent Act has the power of review.

31. This takes me to the merits of the impugned order. As noticed earlier, the original order dismissing the application under Section 32(4) of the Rent Act was passed by the Appellate Board (presided over by Shri Irshad Agha). Normally, an application for review has to be placed before the same Judge. It transpired during the course of the arguments at bar that when the application came for hearing, the concerned Presiding Officer was not posted at the same place and therefore, it was placed before the Appellate Board (presided over by Ms. Sherin Paul). Be that as it may, as of present, the Appellate Board is presided over by the same Judge namely, Shri Irshad Agha. In such circumstances, I find it appropriate to direct the placing of the review application before the Appellate Board presided over by Shri Irshad Agha.

32. Before parting with the final order, it is necessary to note that the original application for eviction has been filed way back in the year 1993. The revision before the Appellate Board, arising out of the rejection of the preliminary objection to the maintainability of the application is of the year 2013. The present petition arises out of an order passed under Section 32(4) of the Rent Act, in the revision application. At one stage, it was suggested to the parties to get the main application decided on its own merits, including the preliminary objection. However, the parties insisted that this Court decides the issue of availability of power of review to the Appellate Board.

33. In the result, the following order is passed:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order dated 05.12.2017 is hereby set aside.
- (iii) Civil Review Application No. 5/2014 is restored back to the file of the learned District Judge, North Goa, acting as the Appellate Board for disposal in accordance with law.

- (iv) The Appellate Board shall proceed to decide the application, on its own merits and in accordance with law.
- (v) The Appellate Board shall also endeavour to decide the appeal on its own merits and in accordance with law, as expeditiously as possible and within a period of six months from the receipt hereof.
- (vi) Parties to remain present before the Appellate Board on 11.04.2019 at 10:00 a.m.
- (vii) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

SMA/EV