

IN THE HIGH COURT OF BOMBAY AT GOA**LETTERS PATENT APPEAL NO.3 OF 2010****IN****WRIT PETITION NO.858 OF 2009**

Shri Shabeer Mohamad Aenapure,
Businessman, Shabeer Library,
Resident of H.No.216,
Tar Quarters,
Dhuler, Mapusa Goa.

... Appellant

Versus

Shri Bhairao Shripad Natekar,
r/o Angod Vaddo,
Mapusa, Bardez Goa.

... Respondent

Mr. Valmiki Menezes, Mr. A. Shirodkar and Ms. S. Mandrekar,
Advocates for the Appellant.

Mr. J. P. Mulgaonkar and Ms. R. Banaulikar, Advocates for the
Respondent.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 25th September, 2019

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. Menezes, learned counsel for the Appellant and
Mr. J. P. Mulgaonkar, learned counsel for the Respondent.

2. This Letters Patent Appeal is directed against the judgment

and order dated 13.08.2010 made in Writ Petition No.858 of 2009 by the learned Single Judge of this Court dismissing the petition against the judgment and order dated 02.02.2009 made by the Administrative Tribunal, Panaji, exercising the appellate powers under the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the said Act).

3. At the outset, Mr. J. P. Mulgaonkar, learned counsel for the Respondent objected to the maintainability of this Letters Patent Appeal by pointing out that the exercise of jurisdiction by the learned Single Judge relates to supervisory jurisdiction under Article 227 of the Constitution of India. He submits that in terms of the Letters Patent, no appeal will lie to the Division Bench against the exercise of powers under the supervisory jurisdiction by the learned Single Judge.

4. Upon perusal of the memo of the petition in Writ Petition No.858 of 2009, as also the judgment and order dated 13.08.2010, we cannot say that the impugned judgment and order relates exclusively to the exercise of powers under the supervisory jurisdiction. This is because it was the case of the Petitioner that the Petitioner was never validly served in Eviction Appeal No.2/2003, in which, the judgment and order dated 02.02.2009, ultimately came to be made. In Writ Petition No.858 of 2009, the Petitioner, had in fact challenged the judgment and order dated 02.02.2009 *inter alia* on the ground that there was no valid service

upon him and therefore, there was no occasion for invocation of provisions of Section 32(4) of the said Act against him. In short, the Petitioner herein, had complained about the failure of natural justice and consequently, had invoked the jurisdiction of the learned Single Judge under Article 226 of the Constitution of India as well. In these circumstances, we find it difficult to agree with Mr. Mulgaonkar that the impugned judgment and order has been made by the learned Single Judge of this Court in exclusive exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, we cannot say that the present Letters Patent Appeal is not maintainable.

5. In the present case, the Respondent, by instituting the case No. RENT/ARC/28/1984 before the Rent Controller, sought for eviction of the Petitioner *inter alia* on the ground of default in payment of rent. After the evidence was led by the parties, the Rent Controller by judgment and order dated 11.12.2002 dismissed the Respondent's eviction application on merits.

6. Aggrieved by such dismissal, the Respondent herein instituted an Eviction Appeal No.2/2003 before the Administrative Tribunal which is the Appellate Authority under the said Act. By the judgment and order dated 02.02.2009, the Administrative Tribunal has allowed the Respondent's application dated 11.10.2006 invoking the provisions of Section 32(4) of the said Act and stopped further

proceedings in the appeal and directed the Petitioner to hand over the vacant possession of the suit premises to the Respondent within 45 days from the date of service of order upon him.

7. This means that the Administrative Tribunal has basically stopped the proceedings in appeal, on account of failure of the Petitioner to pay or deposit the rent in terms of Section 32 of the said Act. This basically means that the Petitioner was not allowed to contest the appeal on merits because according to the Administrative Tribunal, the Petitioner, defaulted in the matter of payment or deposit of rent during the pendency of proceedings in appeal before the Administrative Tribunal.

8. In fact, the operative portion of the judgment and order dated 02.02.2009 made by the Administrative Tribunal reads as follows :

“ORDER

Application dated 11.10.06 filed by the appellant under Sec.32(4) of the Rent Control Act is allowed. Further, proceedings in the matter are stopped and the respondent is directed to hand over the vacant possession of suit premises to appellant within 45 days from the date of service of the order to him”.

9. The Petitioner, aggrieved by the Administrative Tribunal's order dated 02.02.2009 instituted the Writ Petition No.858 of 2009, which was taken up for disposal by the learned Single Judge of this Court, in terms of the Appellate Side Rules of this Court.

10. It is in this writ petition the impugned judgment and order dated 13.08.2010 came to be made.

11. The case of the Petitioner was that the Petitioner was never served with a notice in Eviction Appeal No.2/2003 before the Administrative Tribunal and therefore, there was no question of payment or deposit of rent during the pendency of appeal proceedings. The Petitioner had contended that in the absence of notice regards the pendency of appeal, there was no question of invoking the provisions of Section 32(4) of the said Act and that the provisions of Section 32(4) of the said Act contemplate valid service and notice of pendency of proceedings.

12. Section 32 of the said Act reads thus :-

“32. Payment or deposit of rent during pendency of proceedings for eviction.— (1) No tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all arrears of rent in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate or revisional authority.

(2) The deposit of rent under sub-section (1) shall be

made within such time and in such manner as may be prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate or revisional authority, as the case may be, shall, on application made either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate or revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subjected to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf."

(Emphasis supplied)

13. From the aforesaid, it is clear that there has to be a valid service upon a tenant regards the pendency of any proceedings, which will include the proceedings in appeal before, the provisions of Section 32(4) can be invoked against such a tenant. If there is no valid notice then, there is no question of holding that the tenant has failed to pay or deposit the rent during the pendency of proceedings. The provisions contemplate that the tenant is aware or made aware of the pendency of the proceedings whether before the Rent Controller or before the Administrative Tribunal in appeal. Only thereafter the provisions of Section 32(4) can be invoked against such a tenant.

14. The learned Single Judge, in the impugned judgment and order has in fact upheld the Petitioner's contention that there was no valid service in the appeal before the Administrative Tribunal upon the Petitioner herein.

15. The aforesaid finding is recorded in paragraph 12 of the impugned judgment and order dated 13.08.2010 and the same reads as under :-

“12. The provisions of Rule 10 do show that sending a notice by registered post is one of the modes of service of notice. It appears that the notice sent by registered post was not served on the tenant as the suit premises were found closed, and then it was served by affixing a copy of the notice on the suit premises i.e. the place where the tenant was carrying on his business of a library. The provisions of sub-rule(1) of Rule 10 show that in case the notice could not be served by registered post A.D., it was required to be affixed not on the business premises but on the last known place of residence. Admittedly, the tenant was not served with notice by affixing it at his last known place of residence, and, therefore the tenant's contention that he had no notice of the filing of the appeal until he received a notice of the application dated 11-10-2006 under Section 32(4) of the Act, has got to be accepted. The Tribunal's conclusion that the tenant was served with notice of the appeal in accordance with law, therefore, is erroneous.”

16. The learned Single Judge however, has thereafter observed that notwithstanding the fact that there may have been no valid service in the appeal upon the Petitioner, there is other material on record to

hold that the Petitioner is a cantankerous tenant who has even earlier committed defaults in the matter of payment or deposit of rent. The learned Single Judge has also observed that the eviction order made by the Administrative Tribunal in Eviction Appeal No.2/2003 was not merely by invoking the provisions of Section 32(4) of the said Act but the eviction order was also made on merits. The learned Single Judge has then held that there was no warrant to interfere with the Administrative Tribunal's order dated 02.02.2009, in so far as it has dealt with the matter on merits and observed that the Petitioner has indeed a cantankerous tenant.

17. According to us, on perusal of the judgment and order dated 02.02.2009 made by the Administrative Tribunal, it is very clear that the Administrative Tribunal has not at all gone into the merits of the matter but the Administrative Tribunal has merely allowed the Respondent's application dated 11.10.2006 invoking the provisions of Section 32(4) of the said Act and on such basis, closed further proceedings and directed the Respondent to hand over the vacant possession of the suit premises to the Respondent herein. This is quite clear from the operative portion of the judgment and order dated 02.02.2009 which is transcribed above. In fact, once the Administrative Tribunal invoked the provisions of Section 32(4) of the said Act, there was no question of further going into the merits of the appeal or further allowing the appeal on merits as against the Rent Controller's judgment and order dated

11.12.2002.

18. For the aforesaid reasons, with respect, we are unable to agree with the view taken by the learned Single Judge that the eviction of the Petitioner was required to be sustained on merits, even though in the present case, there was no valid service upon the Petitioner and consequently, there was no justification for invoking the provisions of Section 32(4) of the said Act. The observations in the judgment and order dated 02.02.2009 made by the Administrative Tribunal that the Petitioner was cantankerous tenant were really in the context of stoppage of further proceedings and/or rather deciding whether any sufficient case had been shown by the Petitioner in terms of Section 32(4) of the said Act for not stopping further proceedings. The said observations were not the observations on merits in the appeal as such. The said observations had in fact nothing to do with the merits of the appeal. The said observations were made because the Administrative Tribunal had recorded a finding that there was a valid service upon the Petitioner and thereafter the Tribunal was considering whether there was sufficient cause not to stop further proceedings.

19. Since the learned Single Judge has in terms held that there was no valid service upon the Petitioner, the matter, should have simply been remanded to the Tribunal for fresh adjudication on merits, since, without service of notice of pendency of appeal, there was no question of

invoking the provisions of Section 32(4) of the said Act.

20. Mr. Mulgaonkar, the learned counsel for the Respondent however submitted that the findings recorded by the learned Single Judge in paragraph 12 of the impugned judgment and order itself warrant interference. He submits that at no stage had the Petitioner indicated that he was not to be found in the suit premises or that he resided at some different premises. Mr. Mulgaonkar submits that the view taken by the learned Single Judge of this Court sounds in the arena technicalities and therefore this view required to be upset by this Court exercising its letters patent jurisdiction. He submits that it is always open to the Respondent to defend the impugned order even without filing any formal cross objections.

21. According to us, the crucial finding that there was no valid service upon the Petitioner cannot be questioned in this manner by the Respondent in this appeal. Even otherwise, we do not agree with Mr. Mulgaonkar that the approach of the learned Single Judge in this matter was technical or hyper technical. Ultimately, rules provide for manner of service and if the material on record bears out that there was no service as provided under the rules, we cannot say that the learned Single Judge erred in any manner in returning a finding that there was no valid service in terms of rules.

22. On the issue of withdrawal of amount, we are conscious about the order made by us on 28.09.2011 at the stage of admission of the appeal and grant of interim relief. However, we find that it is in fitness of things that the Respondent —landlord is permitted to withdraw the amount deposited by the Petitioner during the pendency of this appeal in their entirety. Such withdrawal, shall however abide by the final orders that will be made by the Administrative Tribunal in the appeal which now we have restored to the file of the Administrative Tribunal. This means that the Administrative Tribunal, will be at liberty to make appropriate orders in regard to the amount over and above the agreed rental amount of Rs.105/- per month alongwith the accrued interest thereon.

23. In the result, we set aside the impugned judgment and order to the extent it goes into the merits of the matter and sustains the eviction order made against the Petitioner and remand the matter to the Administrative Tribunal to decide the Eviction Appeal No.2/2003 afresh on its own merits and in accordance with law.

24. Taking into consideration that the eviction proceedings were instituted in the year 1984, we direct that the Administrative Tribunal to dispose of the Eviction Appeal No.2/2003 as expeditiously as possible and in any case within a period of three months from the date of parties filing authenticated copy of this judgment and order.

25. The parties to appear before the Administrative Tribunal on 7th October, 2019 at 10.30 a.m. and file authenticated copy of this judgment and order.

26. The Administrative Tribunal is directed to dispose of the Eviction Appeal No.2/2003 which is now restored to its file as expeditiously as possible and in any case within a period of three months from the said date i.e. 7th October, 2019.

27. The learned counsel for the parties state that the parties and their counsel will appear before the Administrative Tribunal and will co-operate with the Administrative Tribunal in expeditious disposal of the appeal. In particular, they state that no unnecessary adjournments will be applied for.

28. The appeal is allowed in the aforesaid terms. There shall be no order as to costs.

NUTAN D. SARDESSAI, J

M. S. SONAK, J.

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