

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 1 OF 2019
IN
WRIT PETITION NO. 921 OF 2018

Gurudas Narayan Salgaonkar (Dec)			
Thr. LRs.,	...	Applicants	
Versus			
Krishna Aras (Dec) Thr. LR.	...	Respondents	

Applicant in person.

Ms. Amira Razaq, Advocate for the Respondent Nos. 2 to 7.

CORAM:- C.V. BHADANG, J.

DATE:- 5th APRIL, 2019.

ORAL ORDER:

This is an application for review of the judgment and order dated 10.12.2018, passed by this Court in Writ Petition No. 921/2018. By the said judgment, this Court has confirmed the concurrent findings of the Courts below, directing eviction of the original petitioners, on the ground of arrears of rent and sub-letting. Admittedly, there was no written lease agreement between the parties.

2. I have heard Mr. Vasant Salgaonkar, the applicant in person and Ms. Razaq, the learned Counsel for the respondent nos. 2 to 7. Perused record.

3. The only contention raised by the applicant in person is that, in the absence of any lease deed, the Rent Controller was without jurisdiction to direct eviction. For the said purpose, the applicant has relied on Sections 34, 54, 56 of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act, for short) and Rule 15 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (Rules, for short).

4. It is submitted that Section 34 of the Act makes it mandatory for the parties to execute the lease deed, whenever a building is let out, after the coming into force of the Act. It is pointed out that the Act came into force on 30.09.1969, while according to the respondents-landlords, the lease was created somewhere in 1976. It is thus submitted that the lease, coming into force after coming of the Act, was required to be executed. It is submitted that failure to execute the lease imposes penalty under Section 54 of the Act. It is pointed out that as per Rule 15 of the Rules, a copy of the lease deed has to be sent to the Collector, within 15 days from the date of execution. The applicant has then referred to Section 56 of the Act, in order to submit that the learned Rent Controller can direct eviction only where he is clothed with the jurisdiction under the Act and not otherwise.

5. The applicant in person did not dispute that all these grounds based on Sections 34, 54, 56 of the Act and Rule 15 of the Rules, were neither raised before any of the Courts below nor were raised, even before this Court in Writ Petition No. 921/2018 and they are being raised for the first time before this Court. He, however, pointed out that the objection being of lack of jurisdiction of the Rent Controller to direct eviction, can be allowed to be raised for the first time and can be considered by this Court. The applicant in person has relied upon the decision of the Hon'ble Supreme Court in the case of **Syed Yakoob Vs. K.S. Radhakrishnan & Others, AIR 1964 SC 477**, in order to point out the scope and ambit of the jurisdiction of this Court while entertaining the review petition.

6. Ms. Razaq, the learned Counsel for the respondent nos. 2 to 7 has submitted that the applicant has failed to demonstrate any error apparent on the face of the record, in as much as the grounds now sought to be raised were never raised before the Courts below nor before this Court in Writ Petition No. 921/2018. It is submitted that the absence of the lease deed, has no effect on the jurisdiction of the Rent Controller to entertain the application for eviction and eventually, to direct eviction of the tenant.

7. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for review is made out. As noticed earlier, the applicant has sought to raise the grounds, which were never raised before any of the Courts below nor before this Court in Writ Petition No. 921/2018 and now, they are being raised for the first time before this Court. Even assuming that the grounds can be allowed to be raised for the first time in the review application (in as much as the objection goes to the root of the matter as to the lack of jurisdiction of the learned Rent Controller), I am unable to accept that the absence of lease deed, would have the effect of the Rent Controller lacking the jurisdiction to entertain the application or direct eviction. All that Section 34 of the Act provides is that notwithstanding anything contained in clause (c) of sub-section (1) of Section 3 or any other law for the time being in force, a lease deed shall be executed between the landlord and the tenant whenever a building is let out after the said Act comes into force. Rule 15 of the Rules requires that such lease deed has to be sent to the Collector within 15 days from the date of the execution of the lease deed. It is difficult to gather from the said provision, read with Section 34 of the Act, that it creates a lack or bar of jurisdiction on the Rent Controller to entertain an application for eviction.

8. Section 54 of the Act would show that failure to execute such lease deed invites a penalty and this is the only consequence pointed out from the provisions of the Act, on account of the failure on the part of the parties, to execute a lease deed. Atleast, no provision has been brought to my notice that such failure to execute the lease deed or the absence thereof results into the Rent Controller lacking jurisdiction to entertain an application for eviction.

9. Section 56 of the Act provides that no Court shall have jurisdiction to settle, determine or deal with any question which is by or under this Act required to be settled, determined or dealt with by the Controller, the Rent Tribunal, the Appellate Board, the Administrative Tribunal or the Administrator and no order passed by such authorities under this Act shall be called in question in any Court. Here again, it is difficult to see as to how the absence of the lease deed shall result into the Rent Controller lacking jurisdiction to entertain the application. The principles governing the petition for review are too well settled to be restated. A review is permissible when there is an error apparent on the face of the record, pointed out in the judgment and order under review. The question is whether, there is an error apparent on the face of the record would obviously

depend upon facts and circumstances of each case. The decision in the case of **Syed Yakoob** (supra) turned on its own facts. In the facts of that case, it was held that the concerned statutory provision was capable of two constructions and thus, the error was not the one which can be said to be an error apparent on the face of the record. The decision is clearly distinguishable on its own facts. I do not find that any case for review is made out. The civil review application is dismissed, with no order as to costs.

C.V. BHADANG, J.

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