

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.587 OF 2019

IN

WRIT PETITION NO.592 OF 2011

WITH

WRIT PETITION NO.542 OF 2019

Smt. Aninha Dias,

major, Senior Citizen, ... Applicants
Gonvoloi, Nuvem, Salcete,
Goa

Versus

- 1 The Administrative Tribunal,
 through its President, Vaidya
 Hospital Building, Panaji, Goa.
- 2 The Rent Controller,
 Collectorate Building, Panaji,
 Goa.
- 3 Shri Willy Fernandes,
 Major, House No.1, Old Post
 Office House, Caranzalem, ... Respondents
 Ilhas, Goa.

Shri A.F. Diniz, Senior Advocate with Shri Ryan Menezes and
Shri Nigel Fernandes, Advocates for the applicant.

Shri Valmiki Menzes and Shri Akshay Shirodkar, Advocates
for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 2nd March, 2020.

Pronounced on: 6th March, 2020.

ORDER:

The applicant sought for a clarification of the order dated 15/01/2019 passed by this Court by its application coming up for disposal today

2. Heard Shri A.F. Diniz, learned Senior Advocate for the applicant and Shri V. Menezes, learned Advocate for the respondents. It was the contention of Shri A.F. Diniz, learned Senior Advocate that on 15/01/2019 in the course of the hearing of the matter this Court was satisfied that the Additional Rent Controller had not properly considered the record and/or had not given proper reasons while rejecting the Eviction Application of the applicant, which position was otherwise conceded by the learned Advocate for the respondent no.3 to the Writ Petition. Consequently, this

Court by its order dated 15/01/2019 set aside the orders of the Courts below and remanded the matter to the Court of the Rent Controller i.e. the Civil Judge, Junior Division in view of the amendment to the Rent Control Act and directed that the matter be heard and decided within 3 months from the date of the order.

3. The order dated 15/01/2019 was with the clear direction to hear the parties and decide the proceedings based on the existing record and for which a short time span of 3 months was specified in the direction. However, the respondent no.3 on remand filed an application seeking to place on record the alleged subsequent facts by amending his written statement/ reply to the Eviction Application which was not at all contemplated by the order dated 15/01/2019, which only directed the Rent Controller/Civil Judge to hear the parties and decide the matter, based on the existing records. The application for amendment filed by the respondent no.3 was to add the fact subsequently transpired but before the order and therefore the

proceedings could be changed by amendment. The direction was to hear the contentions of the parties within 3 months and therefore there was no scope for the amendment which was only intended to delay the proceedings. It was another matter that the amendment was dismissed by the Rent Controller and as it found that the events sought to be brought on record were prior to 2010 and vague and much prior to the order dated 15/01/2019 .

4. Shri Diniz, learned Advocate for the applicant submitted that the order dated 15/01/2019 had therefore to be clarified accordingly requiring the parties to be heard and the Rent Controller to decide the matter on the basis of the existing record and without further giving any latitude to the parties to take out and maintain any other proceedings / application.

5. Shri Menezes, learned Advocate for the respondents submitted that the Code of Civil Procedure was not applicable to the proceedings under the Rent Control Act but

the Mamlatdar's Court Act would apply and therefore the proviso to Order VI Rule 17 CPC would not apply to the proceedings before the Rent Controller. It was his contention that it was a plain order of remand leaving all questions open and therefore the respondent no.3 was very much entitled to maintain the application for amendment which unhappily for the respondent no.3 was dismissed by the Rent Controller giving rise to the Writ Petition at his instance. He placed reliance in **M. M. Quasim v/s. Manohar Lal Sharma and others** [1981 3 SCC 36]. It was his contention further in reply to the submission of Shri Diniz, learned Senior Advocate that it was open to the Trial Court to consider all aspects including an application for amendment on remand. There was no limit put on the Trial Court by virtue of the order of remand.

6. The amendment was two fold which had to be granted but which was not granted by the learned Rent Controller. He placed reliance in **Variety Emporium v/s. V.R.M. Mohd. Ibrahim Naina** [AIR 1985 SC 207]. He also

addressed on the tenability of the Writ Petition at his instance and placed reliance in **Ramesh Kumar v/s. Kesho Ram** [AIR 1992 SC 700], **Kanchusthabam Satyanarayana and others v/s. Namuduri Atchutaramayya and other**[AIR 2005 SC 2010] and **Begum Hamid Ali Khan v/s. Col. B.H. Saidi and others** [AIR 1982 Delhi 352] on the scope of remand. The order of remand nowhere curtailed the hands of the Trial Court to exercise jurisdiction of the Rent Controller. He placed reliance on the Division Bench Judgment in **Major (retd.) Kehar Singh v/s. Velentino Xavier Pereira** [WP Nos.302 & 300/2010 3, 409 & 435 of 2011] to buttress his contention that the CPC did not apply and the provision of Mamlatdar's Court Act applied to the proceedings before the Rent Controller. No clarification was required on the contention on behalf of the applicant and therefore the application for clarification had to be dismissed and his Writ Petition had to be allowed.

7. Shri Diniz, learned Senior Advocate in reply submitted once again that the remand order was limited and that it was not a case of open remand. The order passed by this Court on 15/01/2019 was to decide "the proceedings" and not any changed or amended proceedings, within 3 months period while the Appeal was to be decided within a further period of 3 months. Paragraph 4 of the order keeping the contention open referred to the submissions in the matter at large and in that context relied upon the extract of the Webster Dictionary and Cambridge Dictionary of the word "contentions". The order dated 15/01/2019 was never intended to enlarge the scope of the proceedings or allow amendment for fresh evidence. The application for amendment by the respondent was to enlarge the scope of the order of remand.

8. On merits of the Writ Petition filed by the respondent no.3, it was his contention that the Trial Court had rightly rejected the amendment application and in that context he adverted to the pleadings in the Writ Petition and submitted

that these were not subsequent events but events much prior to the passing of the order dated 15/01/2019. The learned Trial Court i.e. Rent Controller had observed the general principle governing grant or otherwise of the amendment and decided the application against the respondent No.3/petitioner. The main concern before the learned Rent Controller was whether the delay in moving the amendment was justified and the extent of prejudice which would occasion to the applicant in case the same was allowed. There was nothing amiss in the order passed by the Rent Controller and therefore the Writ Petition to challenge the order of dismissal of the amendment application was not tenable.

9. Shri Diniz, learned Senior Advocate next adverted to the draft amendment filed on behalf of the respondent no.3/petitioner and submitted that in his opinion averments in the proceedings were vague and it was apparent that the respondent no.3 was not even aware when the structure was built while pleading that it was built some years ago

despite the structure being next to the suit house. The respondent no.3 did have knowledge from the year 2009 and it was not a subsequent event. The Trial Court had rightly rejected the amendment and no interference was called for with the order while exercising the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. He placed reliance in **Shalini Shyam Shetye and another v/s. Rajendra Shankar Patil** [(2010) 8 SCC 329] and submitted that all the parties to the petition were private parties and that even otherwise there was no basis to invoke the supervisory jurisdiction of this Court and therefore no interference was called for with the order under challenge in the Writ Petition.

10. Shri A.F. Diniz, learned Senior Advocate placed reliance in **Smt. Rukminibai Motiram Kshirsagar (deceased) through its legal heir Sumanbai Namdeo Kshirsagar and Ors v/s. Smt. Monoramabai Mallikarjun Bagale (deceased) through legal heirs Smt. Shobha Raosaheb Bagale** [2019(6) Bom. C.R. 713], and otherwise submitted

that the application moved on behalf of the original applicant under Section 23(3) of the Rent Control Act, 1968 which was relied on behalf of the respondent no.3/petitioner clearly spelt out the need of the applicant in respect of the suit house in question and which amply demonstrated that the need of the landlord was not eclipsed. He placed further reliance in **Sait Nagjee Purushotham & Co. Ltd. v/s. Vimalabai Prabhulal and others**[(2005) 8 SCC 252] before wrapping his arguments that the view taken by the Trial Court was a plausible view in rejecting the amendment application and there was no reason to interfere with the same order.

11. i would consider their submissions, the judgments relied upon and in that light proceed to decide the application for clarification and the Writ Petition filed by the respondent no. 3 accordingly.

12. At the outset, the contentious order dated 15-1-2019 which has given scope for a lot of interpretation at the

instance of the respondent no.3 in particular needs a reproduction to better appreciate the contours thereof and what was actually intended by the said order. It was in the midst of hearing the Writ Petition no.592 of 2011 filed on behalf of the applicant and after hearing the learned Advocates for a considerable time and having considered the judgment in question and that of the Rent Controller that it was deemed appropriate in the circumstances to quash and set aside the judgment of the Tribunal and also that of the Rent Controller. The matter was remanded to the Court of the Rent Controller i.e. the Court of the Civil Judge designated as a Rent Controller to hear the parties and decide "the proceedings" within 3 months from the date of the receipt of the order and thereafter the Tribunal in appeal to decide the matter within a further period of 3 months from the filing of the appeal. The petition was disposed off in these terms leaving all the contentions of the parties open.

13. A Plain reading of this order would reveal in no uncertain terms that the Court of the Civil Judge i.e. the

Rent Controller was to decide the proceedings within 3 months from the date of the receipt of the order passed by this Court shorn of any other records except those before the Rent Controller and it was never intended pursuant to the order of the remand that the scope of remand was enlarged or kept open for the learned Rent Controller to enlarge its scope and take its own time to decide the proceedings. The learned Rent Controller was given a fixed time limit of 3 months to decide the proceedings i.e. on the basis of the records before it within a period of 3 months from the date of the order and there was no scope or latitude for the Rent Controller to decide the proceedings on the basis of any changed or amended proceedings within the said time limit. Even the contentions which have been referred to in paragraph 4 of the said order referred to the submission in the matter at large and it could never be considered that it was open or available to the respondent no.3 to enlarge the scope of the order of remand by reading

into it any additional proceedings or proceedings which were not intended by this Court.

14. The expression "contention" as contained in the Cambridge English Dictionary means the disagreement and in terms of the Webster Dictionary a point advanced or maintained in a debate or arguments. Viewed from the dictionary meaning of the word "contention" relied on behalf of the applicant, the contention referred to in paragraph 4 of the order dated 15/01/2019 could never be construed that it would envelop any other extraneous contentions which were not forming a part of the record before the learned Rent Controller and therefore, the contention of Shri Diniz, learned Senior Advocate for the applicant needs reckoning that the order of remand was restricted in its scope requiring the Rent Controller to hear the parties and decide "the proceedings" within 3 months from the date of the order of this Court and nothing further. It could never be construed that it was intended that the Rent Controller was to entertain any supplementary or miscellaneous application

at the behest of the parties and enlarge the scope of the remand order passed by this Court. It is therefore clarified that the order dated 15/01/2019 remanding the matter to the Rent Controller was to hear the matter and decide the proceedings within the time specified and nothing more and without taking into account any extraneous application enlarging the scope of this remand order. The application for clarification according stands disposed off.

15. Coming now to the Writ Petition filed at the instance of the respondent no.3 challenging the order passed by the Rent Controller dismissing the amendment application, a cursory perusal thereof would reveal as rightly pointed by Shri Diniz, learned Senior Advocate that the learned Rent Control had clearly observed the basic principles governing the grant of amendment or otherwise and come to a clear finding that the respondent no.3/petitioner had not given any details as to when they came to know about the said facts which they sought to incorporate by the proposed amendment and besides the said proposed amendment was

vague and contained insufficient statement. The Rent Controller had otherwise found that the respondent had failed to give sufficient explanation as to why the proposed amendment was not brought on record earlier and that it would cause grave prejudice to the applicant since the evidence in the matter concluded more than 25 years back. Besides, as further rightly submitted by Shri Diniz, learned Senior Counsel for the applicant, the Writ Petition filed challenging the said order was between the private parties alone claiming right as landlord and tenant.

16. In **Shalini Shetye**(supra) too it was found by the Hon'ble Apex Court that the petition had been entertained as a Writ Petition in a dispute between a landlord and tenant amongst private parties and that it was well settled that a Writ Petition is a remedy in public law which may be filed by any person but the main respondent should be either the Government, Governmental agencies or a State or instrumentalities of a State within the meaning of Article 12 of the Constitution of India. Private individuals cannot be

equated with the State or instrumentalities of the State. Under the phraseology of Article 226, the High Court can issue writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform. It was further held that a private person becomes amenable to writ jurisdiction only if he is connected with a statutory authority or only if he/she discharges any official duty. Therefore the High Court erred by entertaining the writ petition. The said judgment also lay emphasis on the growing trend amongst several High Courts to entertain Writ Petition in the cases of pure property disputes and there is tendency of entertaining Writ Petitions under Article 227 of the Constitution of India which was sought to be justified as an erroneous appreciation of ratio in **Surya Dev Rai vs. Ram Chander Rai and others** [(2003) 6 SCC 675].

17. I would not go into the other aspects of the merits of the petition inasmuch as it has been clearly held earlier that decision on the application for clarification would decide the fate of the writ petition and having come to a clear finding

that the order required clarification and which has been so issued, the writ petition does not survive even otherwise and is accordingly dismissed.

NUTAN D. SARDESSAI,J.

Mv

Shri V. Menezes, learned Advocate later on appeared and sought for a stay of the Trial Court proceedings since there was an interim stay earlier granted by this Court.

2. Shri Ryan Menezes, learned Advocate for the applicant submits that the Trial Court is under directions to dispose off the matter and grant of such stay would be counter productive. Nonetheless considering the larger picture and in the interest of justice stay granted of four weeks.

NUTAN D. SARDESSAI,J.

Mv