

**IN THE HIGH COURT OF BOMBAY AT GOA**

**Writ Petition No.892 of 2019**

Smt. Gulbanoo Akbar Habib Veljee,  
Widow of late Akbar Habib Veljee,  
Aged about 76 years, 7, Ground floor,  
Jesuit House, Near Municipal Garden,  
Panaji, Goa.

..... Petitioner

V e r s u s

M/s. Goa Xavier Company (Pvt.) Limited,  
A Private Limited Company, registered  
under Indian Companies Act of 1956,  
Having its registered office at Loyola High  
School, P. O. Box Margao Goa,  
represented by its  
authorised representative,  
Fr. Abraham, Painumkal SJ,  
Superior Jesuit House, aged 71 years,  
R/O Jesuit house, Near Municipal Garden,  
Panaji, Goa.

..... Respondent

Mr Abhay Nachinolkar for The Petitioner.

Mr J. A. Lobo, Advocate for the Respondent.

**CORAM: DAMA SESHADRI NAIDU, J.**

**DATE: 20th January 2021.**

**ORAL ORDER:**

**Introduction:**

A landlord seeks his tenant's eviction; one of the grounds is the tenant's default in paying the rent. Summons served, the tenant appears. But he does not apply under section 22 (3) or section 32 (1) of the Act. Beyond 30 days, he files a written statement and also an application. That application seems to answer the requirement under section 22 (4) of the Act.

The Rent Controller allows it, but the Revisional Court reverses it. So this Writ Petition.

2. The question is, If the tenant has invoked neither section 22 (3) nor section 32 of the Act, does he still have an opportunity to justify the default, if any, under section 22 (4) of the Act?

**Facts:**

3. This is a tenant's Writ Petition against the Revisional Court's order. The Revision was against an interlocutory order passed by the Rent Controller. To appreciate the controversy, I will set out the facts briefly.

4. The respondent-landlord filed Rent Eviction Application No.47/2014/C before the Civil Judge, Junior Division "C" Court, Panaji, which is the designated Rent Controller. The landlord has sought the tenant's eviction on various grounds, including that of nonpayment of rent.

5. The eviction proceedings having been filed on 14/4/2015, the petitioner-tenant received the summons on 9/3/2015. Section 22(3) of the Goa Buildings (Lease, Rent & Eviction) Control Act, 1968, permits him to apply to the Rent Controller in 30 days after he receives the summons for its leave to deposit the rent arrears. In the alternative, as an interim measure, section 32 also permits the tenant to deposit and continue to deposit the rent subject to the eviction proceedings' outcome.

6. Here, the tenant did not apply for the Rent Controller's leave in 30 days to deposit the rent. That means, he has not availed himself of section 22 (3) of the Act. But, on 18/6/2015, he filed his reply joining the issue on the grounds that the landlord raised for eviction. Besides that, he also applied under section 22(4) of the Act for the Rent Controller's leave to deposit the rent. True, before the Trial Court, the tenant's counsel represented that the application was under section 18. First, the application itself does not refer to any provision; and, second, the Rent Controller nevertheless treated that application as one under section 22(4) of the Act. That controversy may not affect the case before us. So, we need not pursue

the fallout of the party's quoting the wrong provision, when the Court otherwise has the power to deal with the issue brought before it.

7. On 20/8/2015, the landlord filed a reply and opposed the tenant's application to deposit the rent. Finally, on 12/9/2016, the Rent Controller allowed the tenant's application. It permitted the tenant to deposit the rent “without prejudice to the right that might have accrued to the landlord.”

8. Aggrieved, the landlord filed Rent Revision Application No.9/2016 before the *Ad hoc* District Judge-I, Fast Track Court, Panaji. Through an order, dated 24/7/2019, the learned Revisional Court reversed the Rent Controller's order. Therefore, it is the tenant's turn to be aggrieved. Accordingly, he has filed this Writ Petition under Article 227 of the Constitution of India.

#### **Submissions:**

##### **Petitioner:**

9. Shri Abhay Nachinolkar, the learned counsel for the petitioner, has strenuously contended that the Rent Controller's order is unexceptionable. In its limited jurisdiction, the Revisional Court ought not to have upset the Rent Controller's otherwise well-reasoned order. According to him, the Revisional Court has proceeded on the premise that the application was under section 18 of the Act, when the application was, in fact, under section 22(4) of the Act and when the Rent Controller did accept that fact. At any rate, as he points out, mere quoting of a wrong provision does not denude a competent court of its jurisdiction, which it otherwise has.

10. After taking me through section 18, section 22 (3) & (4), besides section 32 (1) of the Rent Control Act, Shri Nachinolkar has submitted that the statute provides one more opportunity to the defaulting tenant to remedy the situation and to pay the rent during the pendency of the eviction proceedings. According to him, even on the merits, the tenant has a valid reason for not paying the rent: the landlord persistently refused to receive the rent, though the tenant sent it, first, by money order and, later, by

Demand Draft. Only after perusing the records, especially the money orders and the demand draft, has the Rent Controller ruled in the tenant's favour. And that ruling does not call for any interference especially under the revisional jurisdiction.

11. Eventually, Shri Nachinolkar has relied on a Division Bench decision of this Court in *Smt. Maria Madeira Fernandes v. Vishnu Mahadeo Kanekar*<sup>1</sup>. On the strength of this decision, he has contended that section 22(2) is a code in itself. That sub-section (4) is a facility for the tenant over and above the time limit imposed under section 22(3) and section 32 of the Act. Therefore, in the light of the Division Bench's authoritative pronouncement, the revisional order cannot be sustained. Thus, concludes Shri Nachinolkar.

**Respondent:**

12. On the other hand, Shri J. A. Lobo, the learned counsel for the respondent-landlord, has submitted that the application "admittedly" was under section 18 of the Act, as was represented by the tenant's counsel before the Rent Controller. Even otherwise, according to him, Section 22(4) is a substantial statutory provision that allows the tenant to defend himself against eviction. And that defence is a matter of evidence.

13. To elaborate, Shri Lobo has submitted that under section 22 (3), the tenant does not join issue; instead, he accepts the landlord's entire case and remedies the situation by paying the rent arrears in 30 days after he receives the summons. Thus, the proceedings end. On the other hand, under section 22 (4), the tenant joins the issue, takes a counter plea that he has sufficient reasons for his failure to pay the rent. And in the face of that plea, the Rent Controller may render a finding on the tenant's justification not to pay the rent regularly. It is essentially a matter of merit.

14. Then, Shri Lobo has also drawn my attention to section 32, which is akin to Order 15 of CPC. According to him, under Rule 7 of the Goa,

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<sup>1</sup>AIR 1987 Bombay 240

Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969, the time limit is 30 days. Here, either under Order 22 (3) or section 32, the tenant has failed to adhere to the time limit. Therefore, the Revisional Court has justly decided that the tenant's application under section 22(4) does not lie. Any contrary finding would have negated the statutory command under sections 22 (3) and 32 of the Act.

15. Heard Shri A. Nachinolkar, the learned counsel for the petitioner, and Shri J. A. Lobo, the learned counsel for the respondent.

**Discussion:**

16. Indeed, the issue lies in a narrow compass, and the facts are not disputed. The tenant has been in arrears of rent. That not denied, the tenant nevertheless has a defence that it is the landlord that prevented him from depositing the rent by his refusal to receive. As rightly contended by the landlord's counsel, it is a matter of evidence to be gone into during the trial. Before this Court the question is, should the tenant be given another opportunity under section 22(4) of the Act, as an interim measure, to deposit arrears of rent and continue to deposit the current rent, pending the disposal of the eviction proceeding?

17. This proposition also calls into question whether such course of action can be accepted in the face of the time limit imposed by section 32, read with Rule 7 of the Rules.

18. Shri Nachinolkar has relied heavily on *Maria Madeira Fernandes*, a decision rendered by the Division Bench of this Court. But before appreciating the precedential value of this Judgment, we should put the issue in perspective. For that, we should examine the statutory position. Let us peruse sections 18, 22 (3), 22 (4), and section 32 of the Act, besides Rule 7.

19. If the tenant entertains a *bona fide* doubt as to the person to whom the rent should be paid, or if he does not know the address of the landlord or his agent, or “when the landlord refuses to accept the rent from the

tenant”, he may deposit such rent with the Controller in the prescribed manner. Under any of these three contingencies, the tenant should apply to the Rent Controller with the particulars as set out in subsection (2) of section 18. It is almost akin to an inter-pleader suit under section 88, read with Order 35 of CPC. Under section 18 of the Act, the tenant initiates the proceedings, and the landlord(s) should respond in 30 days after receiving notice.

20. Section 22 (2) of the Act, however, enumerates the grounds of eviction. Some of the grounds are these: arrears of rent exceeding three months’ rent, not paid in one month after notice; illegal sub-letting; unauthorised use; acts of damage; nuisance. If the eviction is to be ordered on the grounds of nonpayment of rent, the tenant should have failed to tender the rent in 30 days after his receiving the summons in the suit, along with “the cost of application”.

21. That is, there should have been rent arrears exceeding three months, and the tenant must have failed to pay the rent in thirty days after receiving the statutory notice. This is the first phase. The tenant's failure allows the landlord to seek the tenant's eviction. Before we discuss the second phase, let us examine sub-section (3) of section 22. In fact, this provision stands between the cause of eviction and the actual eviction.

S.22 (3): No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (2), *if the tenant, within thirty days of the service of the summons of proceedings on him, pays or tenders to the landlord or deposits with the Controller the arrears of rent due by him up to the date of such payment, tender or deposit together with the cost of application:*

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any building he again makes a default in the payment of rent of that building for a total period of three months.

(italics supplied)

22. This is the second phase. Sub-section (3) of section 22 permits the defaulting tenant to avoid eviction by paying the rent arrears within a time

frame. It is a beneficial statutory measure to mitigate the trouble of summary eviction to a tenant. Law presupposes tenant's difficulties and allows him an opportunity to avoid eviction. Once the landlord initiates eviction proceedings under sub-section (2) (a) of section 22 of the Act, the tenant can still avoid eviction under section 22 (3) by paying the rent arrears in 30 days after his receiving the notice. Thus, the tenant gets the opportunity at two levels: (a) once when he receives the statutory notice demanding rent; second, when he receives the summons in the eviction proceedings. In both cases, the time limit is 30 days.

23. We may pay attention to the expression "notwithstanding anything contained in sub-section (3) or in section 32". We have already seen what sub-section (3) of section 22 contains. Under that provision, the tenant accepts the landlord's entire case, yet he gets a reprieve by paying the rent arrears in 30 days after he receives the notice. And section 32, as we shall see, contemplates an interim measure. Nothing more.

24. So, let us examine section 32 of the Act. It deals with "payment or deposit of rent during the pendency of proceedings for eviction". No tenant, facing eviction proceedings, is allowed to contest the proceedings 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. He should also continue to pay the rent that becomes due until the eviction proceedings terminate. Pertinently, this depositing is an interim measure, and it should be made "within such time and in such manner as may be prescribed". And that time and manner stand prescribed by Rule 7 of the Goa Buildings (Lease, Rent and Eviction) Control Rules, 1969. That Rule reads:

7. Time within which and the manner of making a deposit of rent under Section 32.-

(1) A tenant against whom proceeding for eviction has been instituted by a landlord under the Act, shall deposit all arrears of rent due in respect of the building within one month from the date on which notice is served on him for the first time about the said proceedings before the

Controller [or] the appeal or the revisional proceedings before the appellate or the revisional authority, as the case may be.

(2) The tenant referred to in sub-rule (1) shall deposit the rent which may subsequently become due in respect of the building within fifteen days from the date on which such rent became payable by him.

(3) The provision contained in sub-rules (1) to (3) of Rule 5 shall *mutatis mutandis* apply to deposits made under this rule.

The Rule 7, we reckon, is explanatory; 30 days is the time limit.

Now, we will move further.

25. If there is any dispute, under section 32, about the amount of rent to be paid under sub-section (1), the Controller, or the appellate, or revisional authority shall determine the rent summarily to be so paid. For this purpose, either the tenant or the landlord can apply. If the tenant fails to pay the rent, the Controller or other authority shall stop all further proceedings and order the tenant's eviction. Of course, the tenant may show sufficient cause why he could not deposit the rent pending the proceedings. Indeed, sub-section (4) is akin to Rule 4 of Order 15, CPC.

26. As we have seen, section 32 requires the tenant to pay the arrears of rent and continue to pay the regular rent pending the proceedings in a 'prescribed' timeframe. And that prescription is found in Rule 7 of the Rules. The tenant, facing eviction proceedings, shall deposit all arrears of rent in one month after his receiving the summons or notice from the Controller. He should continue to deposit the accrued rent in fifteen days from the due date.

22. Now, let us examine sub-section (4) of section 22. It reads:

S.22 (4): In any proceeding falling under clause (a) of sub-section (2), if the Controller on an application made to it is satisfied that the tenant's default to pay, tender, or deposit rent was not without reasonable cause, he may, notwithstanding anything contained in sub-section (3) or in section 32, after giving the parties an opportunity of being heard, give the tenant a reasonable time, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender the application shall be rejected.

27. In an eviction proceeding on the grounds of rent arrears, the tenant may, on the merits, satisfy the Controller, through an application, that his default to pay the rent was “not without a reasonable cause”. In that event, the Controller will hear both the parties and rule on the tenant’s plea. If the ruling is positive, he gives a reasonable time to the tenant “to pay or tender” to the landlord the rent due up to the date of such payment or tender. Once the amount is, thus, paid, the eviction application will be rejected.

28. Here we may note two things. One is that neither section 22 (3) nor section 32 controls section 22 (4). The other is that sub-section (4) requires the tenant “to pay or tender” the rent up to date to the landlord. It does not use the expression “deposit” as used in section 22 (3) or section 32 of the Act. It is because the finding under sub-section (4) is on the merits, and that finding terminates the proceedings. Nothing further remains, so the question of depositing the rent arrears before the Controller does not arise.

29. Pithily put, the application under section 22(3) terminates the proceedings. The application under section 32, on the contrary, preserves the proceedings but allows the tenant to deposit the rent subject to the outcome of the eviction proceedings. And section 22 (4), too, terminates the proceedings. Under section 22 (3), the tenant accepts the landlord’s plea and makes amends by paying the rent with costs. Under section 22 (4), the Controller accepts the tenant’s counter plea and allows him to pay the rent. No costs need to be paid, for under sub-section (4) it is the landlord that has disabled the tenant from paying the rent by adopting whatever stratagem.

30. Let us see the difference between section 22 (3), section 32, and section 22 (4) of the Act.

| <b>Section 22 (3)</b>                                                                                         | <b>Section 32</b>                                                                                     | <b>Section 22 (4)</b>                                                                           |
|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| The tenant should pay the arrears of rent along with the cost of the application in 30 days after he receives | The tenant should pay the rent and offer to pay the accrued rent continuously before the adjudicatory | The tenant should plead before the Controller that his not paying the rent has a justification. |

|                                                                                                                                                                           |                                                                                                                                                                                   |                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| the summons.                                                                                                                                                              | forum until the eviction proceedings conclude.                                                                                                                                    |                                                                                                                                                                                                      |
| Under this provision, the tenant does not joint the issue; on the contrary, he accepts the landlord's case, but he redeems the situation and saves himself from eviction. | Under this provision, the tenant contests the landlord's case. But he displays his <i>bona fides</i> by paying the rent and continuing to pay the rent until the proceedings end. | It is the tenant's defence. He agrees that he has not paid the rent. But he supplies a justification for his failure. It is a matter of merit and requires trial and evidence for its establishment. |
| Once the tenant complies with this provision, the eviction proceedings end.                                                                                               | It is only an interim measure. It does not affect the case merits.                                                                                                                | The application under this provision supplies the tenant's justification for rent arrears. The proceedings terminate once the adjudicatory forum accepts the defence.                                |
| It has temporal constraint (30 days)                                                                                                                                      | It has temporal constraint (30 days)                                                                                                                                              | It has no temporal constraint.                                                                                                                                                                       |

31. As we have seen the fulcrum of this case is section 22 (4). And the question is this: Is it an interim measure or a measure on the merits offering substantial defence for the tenant to resist the eviction? I reckon it is the latter. And the justification comes from the very the judgment the tenant has relied on: *Maria Madeira Fernandes*.

32. In *Maria Madeira Fernandes*, the appellant filed eviction proceedings on 11th April 1980. The eviction was sought on the grounds of nonpayment of the rents, besides other grounds such as damage to the premises and nuisance. The respondent-tenant received the summons on 2nd May 1980. On 5<sup>th</sup> May 1980, on the date of the first hearing, the Rent Controller was absent. So the matter was listed on 10th July 1980. On that day, the respondent presented his written statement; at the same time, he filed an application for depositing the arrears of rent. He also wanted to

continue to deposit the further rents till the proceedings terminate.

33. On 14th July 1980, the appellant moved the Rent Controller to stop further proceedings. She has contended that the tenant has no right to contest the proceedings as he has failed to pay the arrears or deposit them before the Controller within 30 days after his receiving the summons. Thus, the dispute was under section 32 of the Act. Notified, the respondent filed his reply on 1st September 1980. He pleaded that he had already moved an application for depositing the rent and that, so far, the Rent Controller had not considered that application. So he was not able to deposit the arrears of rent.

34. The Rent Controller passed an order on the respondent's application, permitting the tenant to deposit the arrears and recurring rents without prejudice to the right of the landlady. But eventually, the Rent Controller considered the appellant's application under S.32 for stopping the proceedings. Through an order, dated 30th September 1980, the Rent Controller ordered the tenant to vacate because the respondent "failed and neglected to deposit arrears within 30 days from the date of service of the summons of the proceedings on him". Nor has the respondent shown sufficient cause for his not filing the application within the prescribed time. The respondent's efforts before the Administrative Tribunal bore no fruit.

35. Further aggrieved, the respondent filed a writ petition. In that, a learned Single Judge held that the Controller had allowed the respondent-tenant to file his written statement, thus, permitting him to contest the proceedings. So the stage for stopping the proceedings under sub-section (4) of section 32 of the Rent Act passed and remained unavailable. The learned Single Judge directed the Controller to decide the eviction proceedings on the merits.

36. In an intra-court appeal, the learned Division Bench of this Court in *Maria Madeira Fernandes* has noted that "the learned single Judge has clearly fallen in error in narrowly construing ... Sub-Sec. (1) of S.32". Let

us appreciate the case holding of *Maria Madeira Fernandes*:

- (a) In any eviction proceeding, if the tenant desires to contest, he should invoke section 32. That is, the tenant is statutorily required under section 32 to pay to the landlord or deposit before the Controller all the arrears of rent and continue to pay or deposit the recurring rents till the culmination of the proceedings.
- (b) The eviction under section 22 has several constraints.
- (c) No proceedings for eviction against tenant would lie on the grounds of nonpayment of rent unless the tenant is in arrears of payment of rent due for three months and has failed to pay the arrears of rent within 30 days after his receiving a statutory notice.
- (d) Sub-Section (3) of Section 22 gives a new lease of life to the tenant: Within 30 days after the summons has been served on him, if the tenant pays to the landlord or deposits with the Controller the arrears of rent due by him up to date along with the cost of the application, then no order for eviction of the tenant can arise. And the proceedings end. But this concession is available only once.
- (e) Sub-Section (4) of Section 22 is entirely a distinct and separate provision in the tenant's favour.
- (f) Under section 22 (4), the tenant can come before the Controller at any time by an application saying that his default to pay the rent has a reasonable cause.
- (g) That reasonable cause accepted, the tenant is prepared to pay the rents due by such date as the Controller may fix.
- (h) Then, with the tenant's success under section 22 (4), the eviction proceedings end.
- (i) Under both sub-section (3) and sub-section (4) of section 22, the tenant accepts that he is arrears of rent. But under sub-section (3), the tenant simply accepts the landlord's case, pays up the arrears of rent and the costs; it is to buy peace and avoid litigation. That said, it is within a timeframe: 30 days.
- (j) Under sub-section (4), the tenant shows cause as to why his default should

be condoned. If the Controller accepts the tenant's cause, he plays up the arrears and avoids eviction. He need not pay the costs; nor does it have any time constraint.

- (k) Thus, sub-sections (3) and (4) are entirely different and operate on two different planes.
- (l) The tenant's steps under section 32 are "*lis independent* of section 22". The tenant invokes it if he wants to contest the proceedings of eviction.
- (m) Section 22 is by itself a self-contained Code and affords added facility of protection against eviction sought on the ground of nonpayment of rents.

37. In the end, adverting to the facts of the case, *Maria Madeira Fernandes* has held that it is fallacious to hold that once the tenant is allowed to file his written statement and permitted to deposit the rent, there exists no default on the tenant's part. According to it, the tenant's filing the written statement and the Controller provisionally permitting him to deposit the rent do not denude the landlord's powers under section 32 (4). On the contrary, it has held that "it is a statutory requirement on the part of a tenant to deposit if he is in arrears, within 30 days and continue to deposit the recurring rents due and payable until the proceedings are culminated". According to it, "equally a right is created in favour of the landlord to move the Controller ... by an application to stop further proceedings at any stage and obtain a direction to the tenant to put him in possession [under section 32 (4)]".

38. That said, *Maria Madeira Fernandes* has held that on the first effective date of hearing, the tenant "moved an application for deposit of arrears of rents and in that he even mentioned that he is not in arrears of payment of rent". That observation is factual. As to the interpretation of the provisions, *Maria Madeira Fernandes* holds that "welfare statutes must of necessity receive broad interpretation when legislation is designed to give relief, it is not open to the Courts to run away from it by taking a stricter view of the matter. Judges ought to be more concerned with the context

colour and content of the statutes”.

39. As a result, *Maria Madeira Fernandes* treated the tenant’s application as one under section 22 (4) and directed the Rent Controller to decide that application on the merits.

40. In the case before us, if we look at the Rent Controller's order, though he has allowed the tenant's application under section 22(4), he has pertinently noted that the tenant has been permitted to deposit the rent “without prejudice the to the right that might have accrued to the landlord.”

41. The Rent Controller’s preserving the landlord’s “accrued right” if any avoids hardship to the landlord. Nevertheless, he has chosen to question that order. Perhaps, it may be on the premise that his case on the merits may get affected because section 22(4) provides a substantial defence to the tenant. That defence remaining unchallenged at the interlocutory stage, the landlord has apprehended prejudice to his case.

42. The matter carried to it, the Revisional Court has ruled on the legality of the Rent Controller's order. Initially, it has erroneously observed that the application was under section 18 of the Act and that section 18 does not rescue the tenant. Having said that, it has, in my view, correctly proceeded to examine section 24 (4) and its interplay with section 32 of the Act. It has held that the tenant's application under section 24 (4) as an interim measure pending litigation cannot be sustained.

43. I have already noted that once the tenant fails to take advantage of either section 22 (3) or section 32 of the Act, he may not have a second opportunity to have his lapse cured at an interlocutory stage. The consequence that may have been contemplated under section 32 may follow. The landlord has not invoked that provision as yet in this case, though.

44. That said, on the merits based on the original cause of action, the tenant did plead substantial defence under section 24 (4) of the Act. Therefore, in the face of that defence, it is for the Rent Controller to frame an appropriate issue and render a finding on whether the “tenant's default to

pay, tender or deposit rent was not without reasonable cause”.

45. Under these circumstances, I am disinclined to interfere with the revisional order. But, at the same time, I hold that the defence the tenant has taken under section 22 (4) remains as a part of his substantial defence and he may establish that during the trial.

46. Out of abundant caution, I clarify that this Court has not taken away any statutory right, that of either the tenant or the landlord, through this disposition. About the sustainability of the petitioner’s application under section 22 (4) and the landlord’s right to prevent the tenant from participating in the trial without complying with section 32 of the Act are left open.

The writ petition is dismissed—no order on costs.

**DAMA SESHADRI NAIDU, J.**

**AP/-**

MARIA  
AURA  
PEREIRA

Digitally signed  
by MARIA AURA  
PEREIRA  
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