

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1123 OF 2019**

1. Messrs. Kamta Corporation
with its office /business at Ground Floor,
Shop No.4, Jaan Apartments, Nr. St. Mary's
High School, Upper Bazar, Ponda, Goa-
403401 Through its partners

2. Mr. Babuli Kamat Ghanekar, aged 66
years, business, married,

3. Mr. Dilip Kamat Ghanekar
aged 63 years, business, married,
Both C/o Kamta Corporation,
Daulat Bidg., 18th June Road,
Near Goa Pharmacy College,
Caculo Island, St. Inez,
Panaji, Goa.

..... Petitioners

V/S.

Mr. Joaquim Cupertino Costa,
Son of late Salvador D'Costa,
About 65 years of age, married, Retired,
permanent resident of
H.No.381, 4th Ward,
Colva, Salcete Goa,
Through his Power of Attorney

Mr. Belarmino Fernandes,
Son of late Gabriel Fernandes
About 55 years of age, married, business,
r/o. "Villa Rose", Behind St. Ann's Church,
Ponda – Goa. Respondent

Mr. V.R. Tamba, Advocate for the petitioner.

Mr. A.D. Bhobe, Advocate for the respondents.

Coram:- SMT. BHARATI H. DANGRE, J.
Reserved on: 14th January, 2021
Pronounced on : 22nd January, 2021

JUDGMENT :

1. Rule. Rule is made returnable forthwith with the consent of the learned Advocates appearing for the parties.

2. Being aggrieved by the judgment passed in the Rent Appeal No.1 of 2019 by the District Judge-2 Panaji, dismissing the appeal preferred by the petitioner against the judgment and order of the 1st Fora, Civil Judge Junior Division 'C' Court, Ponda, the petitioner, is before this Court.

The petitioner before this Court is tenant. The respondent is the landlord who had instituted an action for the petitioner's eviction under the provisions of Goa, Daman and Diu

(Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as "Rent Act").

3. In order to appreciate the contention of the petitioner the necessary facts are culled out as under:

A Lease Deed was executed on 10/04/1986 at Ponda, Goa between Shri Joaquim Cupertino Costa (respondent) and his wife Mrs. Annie D'Costa on one hand and M/s Kamta Corporation, Panjim (petitioner) represented through its three partners in respect of shop No. 4 on ground floor of a building called as "Jaan Apartment" on plot No. 77 situated at Ponda within limits of Ponda Municipal area and Taluka and Sub-District of Ponda, Goa. The shop admeasuring 25 square metres was leased out to the petitioner for one year commencing on 10/04/1986 and renewable from time to time. In terms of the Lease Agreement the lessee was bound to pay the lessor monthly rent of Rs.700/- by crossed cheque on or before 10th day of every calendar month. The Lease Agreement contained the following important covenants:

“5.The Lessees shall pay at their own cost the electric and water charges of the premises as shown in

respective meters and receipt of the same should be handed over to the Lessors.

6. The Lessors undertake to pay the annual municipal changes as regards to the building as per the rates fixed by the Municipality and other charges if any payable to the Government.

15. The demised shop on the Ground Floor shall be utilised by the lessees for the purpose of setting their business. At all time during the continuance of lease, the Lessees shall keep the premises in good conditions, reasonable wear and tear and damage by fire or storm being accepted by the Lessors at the expiration or sooner termination of lease.”

4. On 18/01/2016 the landlord Joaquim Cupertino Costa took out a notice on the tenant of shop premises bearing No. 4 alleging irregularity in payment of monthly rent. It was averred that there was failure to pay or tender arrears of monthly rent from the period from 21/01/2014 to 31/12/2015 amounting to Rs.17,250/-. It was also alleged that the tenant had kept the shop premises closed since the year 2012 till date. A case of bonafide

need was also put forth by stating that since he had retired from service and was desirous of starting his own business in the shop premises, the petitioner was asked to quit and hand over the vacant possession of the shop premises within 30 days from the receipt of notice, failing which eviction proceedings were contemplated. The said notice was addressed to the petitioner on the address of shop No.4, "Jaan Apartment", ground floor, opposite Super Bazar, Ponda, but the Notice sent by R.P.A.D. returned with an endorsement "party left".

5. The landlord approached the Civil Judge, Junior Division, Ponda by filing an application for eviction under Section 22 (2) (a) and (f) and Section 23 (1)(b) of the Rent Act. The case was registered as case No.6/2016/C. The eviction was sought on the ground of irregularity in paying the monthly rent and failure to pay the monthly rent for the period mentioned in the notice. It was also alleged that there was a failure on the part of the tenant to pay the electricity charges of the suit premises since March,2012 and total of arrears in this regard was approximated to ₹13,700/- and it was alleged that due to non-payment of the said arrears the electricity was temporarily disconnected. It was also alleged that there was failure to pay annual municipality charges as agreed in the Lease

Deed and arrears amounted to ₹4,798/-. It was also averred that the tenant has ceased to occupy the suit premises for a continuous period of 4 months without any sufficient cause. The plea of the suit premises being required by the landlord to initiate his own business was also set up.

The application was opposed by filing a written statement and it was averred that it has been rendered infructuous as the rent was already paid, pursuant to the initiation of proceedings. The irregularity in payment of rent was specifically denied by the tenant and it was alleged that the landlord and his wife are residents of Dubai and monthly cheques were deposited in their account. One cheque dated 30/7/2015 drawn on Goa Urban Co-Operative Bank Limited was deposited in the account of the landlord which was towards the uncollected rent from January 2014 to 31/08/2015 but it was learnt that the cheque could not be debited as the applicant landlord had closed his account and therefore the cheque was never credited into the said account. The respondent addressed an e-mail to the landlord seeking an alternate Bank Account or postal address for effecting the payment of rent but there was no response.

The stand in the written statement is to the effect that the suit premises were put to use as godown and its user was only during the daytime which did not warrant use of electricity. The bonafide need of the landlord was also contested.

6. In the course of proceedings, the applicant landlord himself stepped into the witness box along with one Maria Diniz whereas on behalf of the tenant M/s. Kamata Corporation, Mr.Vivek Ghanekar, one of the partners deposed in support of the defence taken. On consideration of the evidence brought on record in form of the documents and the deposition of the witnesses the Civil Judge, Junior Division, determined the points of consideration as under:

“1. Whether the Applicant proves that Respondents have failed to pay monthly rent from 21/01/2014 to 31/12/2015 amounting to Rs.17,250/along with electricity charges amounting to Rs.13,700/- since March 2012 and Municipal charges amounting to Rs.4,798/-?”

2. Whether the Applicant proves that the suit premises have been kept closed by the Respondents since March 2012 without any sufficient cause?

3. Whether the Applicant proves that he requires the suit premises for is bonafide personal use?”

7. On consideration of the evidence on record, as to point No.1 the finding recorded is to the effect that the tenant is in arrears of payment of electricity and municipal charges which were part of the rent and hence he was held to be in arrears of rent. As regards the point No.2 which was considered for determination as to whether the suit premises have been kept closed by the tenant since March 2012, the point was answered in the positive and the first Court extensively deliberated the distinction between being in possession and being in occupation and held that the premises were not occupied by the tenant and were kept closed. As regards the bonafide need of the landlord, in absence of any material placed on record, the said point was answered in the negative. Conclusively, the Civil Judge Junior Division, arrived at a conclusion that sufficient ground was made out to order eviction of the tenant in terms of Section 22 (2)(a) and (f) of the Rent Act and allowed the

application directing him to hand over the vacant and peaceful possession within a period of 30 days, failing which coercive steps were directed.

8. The said order and judgment was assailed in an appeal filed by the petitioner before the District Judge-2, Panaji in Rent Appeal No. 1 of 2019. The Appellate Court confirmed the findings recorded by the first Court and dismissed the appeal.

9. The petitioner has pleaded his case through the learned Advocate Mr. V. R. Tamba who would invite my attention to the impugned judgments and also the evidence on record. I have also heard Advocate Mr. A.D Bhohe for the respondent.

The eviction of the petitioner has been ordered in the wake of provision contained in Section 22 (2)(a) and (f) of the Rent Act. Sub-Section (2)(a) of Section 22 set out a ground for eviction, where the tenant is in arrears in payment of rent due by him in respect of the building for a total period of three months and has failed to pay or tender such arrears of rent as are legally recoverable from him within thirty days of the receipt of or of the refusal of a registered notice served on him by the landlord for such arrears. The counsel for the petitioner would submit that the Courts below

have wrongly construed the terminology "Rent" and according to him it would actually not include the trade fees and sign board fees. As far as the electricity charges are concerned, the learned counsel for the petitioner has placed on record an information sought by him under the Right to Information Act from the Assistant Engineer Electricity Department, Division-X, Ponda where he sought information on 23/12/2019 by posing the following query "We would like to know whether meter No. C210 1105 962 at shop no. 4 at "Jaan Apartment" belonging to Mrs Annie D'Costa is used by the occupants and whether any dues are remained to be paid with respect to the said meter. On 02/01/2020 response was received, intimating that there are no outstandings against the mentioned installation in shop no 4 at Jaan apartment, Ponda belonging to Mrs Annie D'Costa. Further the information is supplied that some of the bills were issued on average basis, the same are revised considering the actual reading of the meter and an amount of ₹4,427/- is credited to the consumer which will be adjusted. By relying upon the said information the learned counsel would submit that no amount is due on his head towards electricity charges. The learned Counsel asseverate that Rent would not

contemplate electric charges and even if it is held so, no amount is due.

10. True it is that the term “rent” is not defined in the Rent Act but in colloquial language it is understood an agreed sum paid at fixed intervals by a tenant to the landlord; as per Dictionary meaning it is a fixed periodical return made by a tenant or occupant of property to the owner for the possession and use thereof especially; It is thus a regular payment made to a landlord for the use of the property by the tenant. The said payment would cover certain utilities like water, electricity, natural gas etc., depending upon the terms of Agreement between the parties. The Deed of Lease executed between the petitioner and respondent cast a burden on the tenant to pay at their own cost the electric and water charges of the premises as reflected in the respective meters and the receipt of the same is to be handed over to the lessor, whereas the landlord had undertaken to pay annual municipal charges and other charges as regards to the building and any other charges payable to the Government. In terms of the Agreement, lessee was bound to keep all the fixtures, water connections and electricity fitting in good running condition.

11. The lease which is recognized mode of transfer of immovable property is defined at Section 105 to mean – A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is known as rent.

The Transfer of Property Act also determine the rights and liabilities of lessor and lessee and the lessor has a right to recover rent from the lessee mentioned in the lease agreement and to take back the possession of his property from the lessee if there is any breach of conditions on his part. He is empowered to take back the possession of his property from the lessee on termination of the lease term prescribed in the Agreement. The liability of the lessee is to pay the rent or premium which is settled upon in the Agreement to the lessor or is agent within in the prescribed time and he is also under an obligation to maintain the property in the

condition that he initially got the property on commencement of the lease and is duty bound to return the same to the lessor in the same condition. He has a right to fully use the property as an owner would use, and preserve it to the best of its nature. He is under obligation to hand over possession of the property to the lessor after expiry of the prescribed term of lease. Such a lease granted can be terminated in case of breach of an expressed condition by the lessee.

12. In the backdrop of the said definition, the Agreement executed between the parties under the caption “Deed of Lease” by which the petitioner was given the property being shop No.4 in the building known as “Jaan Apartment” on lease was subject to terms and condition stipulated therein. As per the said Lease Deed, the lessee was duty bound to pay to the lessor a monthly rent in the manner specified in clause No.4. The lessee was also liable to pay at their own cost the electrical and water charges of the premises whereas the burden to pay the annual municipal charges was borne by the landlord along with any other charges, if payable to the Government. In the light of the said covenant, the payment of electricity and water charges has assumed the shape of an integral part of rent since it was one of the conditions stipulated in the

Lease Deed for enjoyment of the property by the petitioner. The consideration for the lessor to the lease of his property to the lessee being either the price paid or promised or of money or service or anything of value to be rendered periodically or on specified occasions to the transferor by the transferee who as agreed to the transfer on such terms and since the liability to clear electricity charges and the water charges is outlined in the lease deed to be of tenant, the said payment becomes integral part of the rent since electricity and water are essential for complete enjoyment of the property and when eviction is sought on the ground on failure to pay rent, it would cover the charges of electricity and water charges. Depending upon the terms of the agreement, it may or may not include electric charges. But since here it is the electric charges are part of rent.

13. The term “rent” as has been rightly considered by the Court of Civil Judge, is comprehensive enough to include all payments agreed to be paid by the tenant to the landlord. The payment of electricity charges and water charges in any case was the responsibility to be borne by the tenant. The landlord had produced on record the information sought by him under the Right to Information Act (Exhibit-30) which revealed that arrears of

Rs.13,700/- had accumulated on account of non-payment of electricity bill since March,2012. The electricity meter was therefore temporarily disconnected from 02/12/2015. The information received from the Assistant State Public Information Officer and brought on record reflects that the arrears of the bill is ₹13700/- and it was not paid since March 2012. The query as to since when the current reading was available and the date since which the shop was closed, was given to be since March,2012. It is categorically informed that the meter is temporarily disconnected 02/12/2015 and the notice for disconnection is on account of non-payment of bill and it is already printed on the back side of the electricity bill. The details have already been placed on record and the feeble attempts made by the petitioner to rely on the latest information sought by him on 02/01/2020 revealing that there are no outstanding dues against the meter in question installed in shop No. 4 is of no consequence, since the amount appear to be deposited at the later stage. Both the courts below have concurred regarding the finding that the tenant had not paid the electricity charges of the suit premises since March,2012 and due to its non payment the electricity meter was temporarily disconnected and since the payment of electricity charges by the tenant was a part of a

liability and included in the "rent" due and payable to the landlord, in absence of the tenant discharging the said liability, the Courts have rightly arrived at a conclusion that there was a failure on his part to pay the rent. Though the finding recorded by the Civil Judge to the effect that even the non-payment of trade fees and sign board fees would also be covered within the term "rent" cannot be accepted as this was not the specific understanding between the parties and moreover if the tenant is carrying a trade or business activity, the fees for the same cannot be said to be a part of rent as they are confined to the activity undertaken.

14. As far as the arrears of rent are concerned, on the date of which the notice was issued the tenant was alleged to be in arrears of rent from 21/01/2014 to 13/12/2015. The case of the petitioner/ tenant is that the uncollected rent of the suit premises for January, 2014 to 31/08/2015 was deposited but the cheque was not debited and it was informed that the landlord had closed the account however no letters from the bank, evidencing the said fact is brought on record. An e-mail is alleged to have been addressed to the landlord but there was no response and therefore the rent remained unpaid. It is a different case that subsequently the rent was deposited in the Court. However the purpose of sub-section (a)

of Section 2 of Section 22, arrears in payment of rent due to the landlord for a total period of three months and failure to tender such rent within 30 days on receipt of the notice is a sufficient ground. The notice forwarded by the landlord returned unserved, though it was addressed on the tenanted premises, in name of the petitioner. The concurrent finding recorded by the Courts below in favour of the landlord by granting him relief under sub-section (a) of Section 2 of Section 22 therefore does not call for any disturbance.

15. As far as the ground (f) in sub-section 2 of Section 22 which permit the eviction of a tenant if he has ceased to occupy the building for a continuous period of 3 months without reasonable cause is concerned, the landlord has examined an independent witness Maria who reside in the neighbourhood of the building where the tenanted premises is located. She has deposed that she has seen the shop closed for the last 10 years or without any business being carried out therein. She specifically states on affidavit that there are scooters and motorcycles parked permanently in the front of the said shop by the owner of the adjoining bike repairing shop since the shop is closed. The strenuous attempt to suggest to the said witness that she was unaware of the situation has not

yielded any result and in the cross-examination the said witness assertively state that the shop was always closed and she has given the description of the shops in the neighbourhood and also assertively stated about the location of the plot with the construction carried thereon along with further details. The petitioner's partner has deposed that the premises were used as godown and the premises were never closed. He also asserted that they have never ceased the use of premises at any point of time and hardware material always remained stored there. In support of the contention that the suit premises were maintained and recently the shutter was also repaired, no positive evidence in form of any document to that effect, has been placed on record by the petitioner except a bald statement. In the absence of any such document being brought on record thereby establishing the specific case of the tenant that the premises were being used as godown, which in my considered opinion was the permissible use in terms of the Agreement since the premises was let out of a shop, being commercial premises and let out for the purpose of setting up of the business, there cannot be a doubt that it can be put to use as godown. The case pleaded by the landlord /applicant from the very beginning is that the petitioner has ceased to occupy the shop No.4

in the building for a continuous period of 4 months and this was a ground set up by virtue of clause (f) of subsection 2 of Section 22 seeking an eviction. No material is brought on record by the petitioner to establish that use of the premises as godown was never interrupted and it was in running condition; in the sense that goods stored therein were being transported elsewhere where the business premises were located or that goods were being stored in the godown. Some receipts of goods or some transportation bills ought to have been produced on record to establish the use of shop No.4 as godown. In the absence of any cogent material placed on record by the petitioner, the Courts below are perfectly justified in making a distinction between possession of the premises and its occupancy, since possession would amount to holding it as owner whereas occupying is mere to have one's place of business in the premises. The wording used in sub-clause (f) "ceased to occupy". The fact that a shop let out to the tenant used as godown was all the time occupied by him had to be discharged by the tenant and on failure to discharge the same, the landlord was held entitled for eviction. The availability of reasonable cause for ceasing to occupy the premises could have been within the knowledge of the tenant and in absence of the burden being discharged, the first Court has

rightly granted an eviction in favour of the landlord which has been confirmed by the Appellate Court. Since no legal infirmity is noted in the concurrent findings recorded by the Courts below and since the landlord was held entitled for a relief in the application seeking eviction of the tenant on the permissible ground, the impugned orders are upheld. The writ petition is dismissed.

SMT. BHARATI H. DANGRE, J.

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