

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 144 OF 2022

MEHBOOB SHAIKH AND 4 ORSPETITIONERS.

Versus.

MARIA DE FATIMA VIEGAS E DA
COSTARESPONDENT.

Mr. Kaif Noorani, Advocate *for the Petitioners.*

CORAM : M. S. SONAK, J.

DATE : 10th June 2022

P.C. :-

1. Heard Mr. Noorani for the Petitioners.
2. The challenge in this Petition is to the Order dated 24th March 2022 made by the Civil Court, vested with the powers of Rent Controller, dismissing the Petitioners' application for striking off point for determination No.2, which came to be framed at Exhibit B-15.
3. Mr. Noorani learned Counsel for the Petitioners submits that the suit premises were let out for commercial purposes. He submits that bonafide personal requirement is not a ground available in respect of commercial premises in terms of the law

laid down in *Evaristo Esteneslaoc Rodrigues and ors. vs. Vaman Anant Parab Mahambrey and ors.* (1986) 3 Bom CR 560. He, therefore, submits that the point for determination No.2 does not arise, and the same is required to be struck off.

4. Mr. Noorani submits that if the above point for determination is struck off, then the Petitioners will also have an opportunity to urge that the rent case, which was instituted in the year 2010, should be dismissed in its entirety because the ground for arrears of rent cannot be gone into in the absence of a statutory notice being served upon the tenant to pay such arrears. He submits that such a notice is mandatory, and such a notice was not given in this case.

5. The records indicate that the landlady applied for the eviction of the Petitioners/tenant way back in 2010. However, on account of certain amendments, the matter was transferred from the Rent Controller to the Civil Court and numbered Rent Case No.90/2014/F. This means that the matter has been pending for the last 12 years.

6. The Court at Exhibit B-15 has framed the following points for determination :

(1) Whether applicant proves that the respondent has been paying monthly rent and has not paid monthly rent from January, 2010 ?

(2) Whether the applicant proves that she requires the suit shop and shop-bearing Nos.9 and 14 to start her business venture ?

(3) Whether the respondent proves that the applicant refused to accept the rent ?

7. Instead of contesting the three points on merits, the Petitioners, whose obvious intention is to gain by delaying the proceedings, applied that for striking off the point for determination No.2 on the ground that the plea of bonafide requirement does not apply to commercial premises. The submission across the Bar appears that the Petitioners also wish to file a similar application concerning the first point for determination.

8. The proceedings for eviction cannot be delayed by filing applications one after another and, after that, seeking a stay of the proceedings. The issue of whether eviction on the grounds of bonafide requirement applies to the commercial premises can be decided finally by the Court instead of piecemeal. So also the issue as to whether the Petitioners are indeed in arrears and

whether any statutory notice was required and the same was not issued can also be decided finally.

9. Suppose the Petitioners are permitted to dissect each point for determination at this stage; the proceedings for eviction, which have been pending for the last 12 years, will be indefinitely delayed. The ground that Mr. Noorni urges requires an appreciation of evidence. These are not the grounds which can be taken by demurrer, at least in the facts of the present case.

10. In any case, the Court will finally have to decide this issue, one way or the other, and not piecemeal. The Court intends to resolve these matters finally, but the Petitioners, who obviously have much to gain by delaying the proceedings, wish for piecemeal adjudication. This, in the facts of the present case, is impermissible and cannot be encouraged. At least the extraordinary jurisdiction of this Court is not meant to encourage such an approach.

11. In the impugned Order, the learned Trial Judge has made certain observations, and it would be in the interest of justice to clarify that these observations are *prima facie*. While deciding all the points for determination together and finally, the

Court will have to determine the issue as to whether the premises in question are indeed commercial premises and, further, whether the ground of bonafide requirement applies in the case of such premises. So also, the Court will have to decide the issue of arrears now raised by Mr. Noorani once the parties lead their evidence, together with other issues which arise in the matter.

12. For the reasons above, the extraordinary jurisdiction is not exercised, as this would only delay the proceedings instituted in 2010. Instead, the Court is directed to dispose of all the points for determination on their own merits, after the parties lead evidence on the said issues if they so desire. This Petition is dismissed. Interim Order, if any, is vacated.

13. Since the matter has been pending since 2010, the Court is directed to dispose of Rent Case No.90/2014/F as expeditiously as possible and, in any case, within one year from today.

14. The Petitioners will have to place a copy of this Order before the Trial Court to comply with this Order of expedition. Accordingly, the registry to also forward a copy of this Order to the Trial Court at the earliest.

15. However, all contentions of all parties, on merits, are kept open.
16. The Petition is disposed of in the terms above.

M. S. SONAK, J.