

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 766 OF 2015

Edward Francis Antao Rep. By POA Pascoal ... Petitioner
Patrickl Cardozo

Versus

Gurudas H. A. Dekhne ...Respondent

Mr. V. A. Lawande, Advocate with *Mr. P. Redkar, Advocate for the
Petitioner.*

Mr. Sagar Dhargalkar, Advocate for *Respondent (a), (b) and (c).*

CORAM: G. S. KULKARNI, J.

DATED: 1 December, 2022

P.C.

1. This writ petition assails an order dated 6 April, 2015, passed by the learned District Judge-1, South Goa, Margao, whereby an appeal as filed by the respondent against an order dated 30 November, 2012, passed by the Deputy Collector/Rent Controller, Mormugao, Vasco da Gama, in case no. BLDG/ARC-V/14/99, has been set aside with a direction that the learned Rent Controller shall hear both the parties and dispose of the application under Section 32(4) of The Goa Buildings (Lease, Rent & Eviction) Control Act, 1968, in

terms of the order dated 18 March, 2009, of the Administrative Tribunal in Eviction Revision Application No. 43/2003.

2. Learned Counsel for the petitioner would submit that the impugned order is required to be quashed and set aside inasmuch as the respondent himself in a statement which was furnished before the Rent Controller, had admitted that there was a default in payment of rent and the amount outstanding at the relevant time was Rs.15,159/- as per the respondent's own statement of account. A grievance is made that the learned District Judge in allowing the appeal as filed by the respondent, has made observations which are totally irrelevant in the context of the present proceedings. In this regard, learned Counsel for the petitioner has drawn the Court's attention to paragraph 17 on the impugned order, which pertains to the said adjustment/set off amount of Rs.15,000/-. According to the learned Counsel for the petitioner, on the face of the record, such an observation could not have been made as there is no provision in law that any amounts spent by the respondent-tenant on repairs/maintenance could be adjusted against the default rent and more particularly the allegation that the amounts were so spent is merely a contention of the respondent-tenant and not an admitted factual position. He submits that even otherwise considering the

other observations which are made in the impugned order, the impugned order would be required to be quashed and set aside.

3. On the other hand, learned Counsel for respondent has supported the impugned order. His submission is that a fresh attempt ought to be taken into consideration so that appropriate findings as ordered by the learned District Judge in the impugned order can be referred,

4. I have heard learned Counsel for the petitioner and the learned Counsel for the proposed respondents (a), (b) and (c) as the respondent has expired. The other proposed legal heirs of the sole respondent are unserved, however, considering the view the Court is taking in the present proceedings, in my opinion, no prejudice would be caused to the other proposed respondents who are the legal heirs of the deceased–respondent.

5. Having heard the learned Counsel for the parties and having perused the records, in my opinion, the basic premise on which the impugned order is assailed is on the ground that the learned Rent Controller ought to have recorded appropriate findings on the materials on record and a reasoned order ought to have been passed

by making an appropriate inquiry. The proceedings have emanated from the order dated 30 November, 2012 passed by the Rent Controller. The impugned order does not take into consideration the petitioner's case that there was a clear default as rent amounts were outstanding. In these circumstances, in my opinion, it would be appropriate that a fresh exercise be undertaken by the Rent Controller as expeditiously as possible so that the contention of the petitioner that there was admittedly a default on the payment of rent of the respondent and an outstanding payment of Rs.15,000/- is ascertained after recording appropriate finding thereon on the basis of materials as are available before the Rent Controller.

6. All contentions of the parties in that regard are expressly kept open.

7. Let the Rent Controller undertake such fresh determination and the application be accordingly re-adjudicated in accordance with law, as expeditiously as possible and within a period of two months from today.

8. Needless to observe, that the learned Rent Controller shall take into consideration all existing material as it stood at the relevant time

and the parties would not be permitted to protract the proceedings by leading any fresh evidence.

9. Petition is disposed of. No costs.

10. Applications, if any, stand disposed of in the above terms.

G. S. KULKARNI, J

ANDREZA PEREIRA Digitally signed by ANDREZA
PEREIRA
Date: 2022.12.08 14:00:05 +05'30'