

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.20 OF 2023.**

SUBHASH KESARKAR ... Petitioner.
VS
ASILO DE SAO FRANCISCO XAVIER DAS
ILHAS DIVAR REP. B Y MANAGING
COMMITTEE AND 3 ORS. ...Respondents.

Mr. S. Arabekar, Advocate for the petitioner.

Mr. M. B. D'Costa, Senior Advocate with Mr. R. Abbasi, Advocate
for the respondent nos. 2 to 4.

CORAM: M. S. KARNIK, J
DATED: 12th APRIL 2023

ORAL ORDER

1. Heard Mr. S. Arabekar, learned Counsel for the petitioner, and
Mr. M. B. D'Costa, learned Senior Counsel for the respondent nos. 2
to 4.

2. The petitioner is a tenant in respect of the suit premises which
is being used for a Bar and Restaurant. The respondents are
landlords. The tenant was in arrears of rent. The landlord filed a rent
eviction case against the tenant under Section 22(2)(a) (b)(ii, (c) and
(d) and Section 23 of the Goa Rent Control Act, 1968("the Act" for
short). During the pendency of the application, the tenant deposited
some part of the rent. Subsequently, there was a default in payment
of arrears. By an order dated 19.4.2022, the trial Court allowed the
application filed by the landlord and directed the tenant to hand over

peaceful possession of the suit premises to the landlord within a period of 30 days as a result of the default.

3. The tenant being aggrieved by the order passed by the trial Court approached the Appellate Court. The Appellate Court dismissed the appeal as not maintainable being of the view that the appeal was preferred without deposit of arrears of rent in terms of the specific and unambiguous language of Section 32(1) of the Act.

4. Assailing the order of the learned Appellate Court, the learned counsel for the petitioner submitted that there was no intention on the part of the tenant in avoiding to deposit the arrears of rent. The learned counsel submitted that in fact the tenant was willing to deposit arrears of rent at the time of filing of the appeal, but inadvertently such an application could not be made. An attempt was made by the learned counsel for the petitioner to contend that even when the appeal was placed before the Appellate Court he had submitted that the petitioner is willing to deposit the arrears of rent. The learned counsel further submitted that to show his bonafides, the tenant is not only willing to deposit the entire arrears of rent but even willing to deposit, a sum of Rs.4,000/- per month before the trial Court during the pendency of the Appeal and subject to further orders without prejudice to his rights and contentions.

5. Learned senior advocate for the landlord submitted that in respect of a similar premises in occupation of another tenant, the rent of Rs.4,000/- per month is paid by the tenant. It is submitted that the tenant is in default of arrears of rent. It is further submitted that the tenant was paying a meagre rent of Rs.20/- per month. The tenant failed to pay rent for 72 months during pendency of the proceedings before the trial Court and even at the stage of hearing of the appeal, no such deposit was made in terms of the mandate of section 32(1) of the Act. Mr. D'Costa submitted that at every stage the petitioner has been callous and the default is such that no indulgence deserves to be shown to the tenant/petitioner.

6. Heard. No doubt, during the pendency of the application before the trial Court, the petitioner failed to deposit rent for six years, as a consequence the trial Court had to stop further proceedings in terms of said Section 4 of Section 32 of the Act and made an order directing the tenant to put the landlord in possession of the premises. The tenant preferred an appeal which was dismissed by the impugned order on failure to deposit the arrears of rent.

7. Except for the contention of the learned counsel for the petitioner that at the time of hearing of the appeal, the tenant had expressed his willingness to deposit the arrears of rent, the same is not supported by any material. Learned counsel, on instructions,

submitted that the tenant is willing to deposit the arrears of rent within a period of one week from today. It is submitted on instructions that the tenant is also willing to pay an enhanced rent of Rs.4000/-p.m. which he is willing w.e.f. 01.05.2023 without prejudice to the rights and contentions of the parties.

8. Considering the stand taken by the petitioner, in the interest of justice with a view not to deprive the petitioner the remedy of a statutory appeal, an opportunity needs to be given to the tenant to contest the appeal on merits subject to the petitioner depositing entire arrears of rent within one week from the date of uploading of this order with the Appellate Court.

9. The learned Counsel for the petitioner, on instructions, is further agreeable that out of a sum of Rs.4,000/- p.m. to be paid as enhanced rent, an amount of Rs.2,000/-p.m. will be deposited with the Appellate Court, and an amount of Rs. 2,000/-p.m. will be paid to the landlord without prejudice w.e.f. 01.05.2023. The statement is accepted.

10. In this view of the matter, the writ petition is allowed. The impugned order is set aside, subject to the petitioner depositing arrears of rent with the Appellate Court till the end of April 2023 within a period of one week from from the date of uploading of this

order and thereafter depositing the rent regularly in addition to what is stated herein above. The Appellate Court to hear the appeal on its own merits and in accordance with the law. Parties to cooperate.

11. Writ Petition stands disposed of in the aforesaid terms.

M. S. KARNIK J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
Date: 2023.04.20 18:49:23 +05'30'