

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 146 OF 2022

1 Mr Otto Jaime Hamilton P. De Souza
Son of late Antonio Serafin De Souza
86 years of age,

2 Mrs Diana Rosa V. E. De Souza
82 years of age,
Both resident of Gemini,
Plot D-2, La Campala Main Road
Miramar, Panaji Goa.

... Petitioners

Versus

Shri Prabhakar Moraskar
80 years of age,
Son of late Sitaram Morajkar
Retired, Married, Indian National,
Resident of H. No.E/38,
Bhatlem, Panaji Goa.

... Respondent

Mr J. E. Coelho Pereira, Senior Advocate with Mr Vinod Korgaonkar
and Mr Sagar Rivankar, Advocates for the Petitioners.
Mr J. J. Mulgaonkar, Advocate for the Respondent.

WITH

WRIT PETITION NO. 246 OF 2022 (Filing No.)

Shri Prabhakar Moraskar
80 years of age,
Son of late Sitaram Morajkar
Retired, Married, Indian National,
Resident of H.No.E/38,
Bhatlem, Panaji Goa.

...Petitioner

Versus

1 Mr Otto Jaime Hamilton P. De Souza
Son of late Antonio Serafin De Souza
86 years of age,

2 Mrs Diana Rosa V. E. De Souza
82 years of age,
Both resident of Gemini,
Plot D-2, La Campala Main Road
Miramar, Panaji Goa.

...Respondents

Mr J. J. Mulgaonkar, Advocate for the Petitioner.
Mr J. E. Coelho Pereira, Senior Advocate with Mr Vinod Korgaonkar
and Mr Sagar Rivankar, Advocates for the Respondents.

CORAM: M. S. SONAK, J.

DATED : 27th JULY 2023

ORAL JUDGMENT

1. Heard the learned counsel for the parties.
2. Rule in both the petitions. The learned counsel for the parties agree that the rule can be disposed of immediately. Further, they agree that both these petitions can be disposed of by a common judgment and order.
3. The Petitioner in WP No.246 of 2022 (F) is the tenant and the Petitioners in WP No.146 of 2022 are the landlords.
4. The challenge in Writ Petition No.246 of 2022 (F) is to the Appeal Court's judgment and order dated 06.01.2022 by which the proceedings in the tenant's appeal were stopped for the failure of the

tenant to deposit the rent under Section 32(1) of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 (the said Act) pending the appeal and an eviction order was made.

5. The challenge in WP No.146 of 2022 is to the Appeal Court's order dated 06.01.2022, by which the Appeal Court allowed the tenant's application for deposit of rent under Section 18 of the said Act.

6. If the Appeal Court's order dated 06.01.2022 in tenant's WP No.246 of 2022 (F) is perused, then it is apparent that the Appeal Court has stopped the proceedings because, in the Appeal Court's judgment, no sufficient cause was shown by the tenant for not depositing the rent within 30 days from the institution of the appeal. The Appeal Court concluded that in such circumstances, the provisions of Section 32(4) of the said Act were attracted, compelling the Appeal Court to close the proceedings and order the tenant's eviction.

7. Section 32 of the said Act reads as follows:

“32. Payment or deposit of rent during pendency of proceedings for eviction.— (1) No tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, 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 in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate or revisional authority.

(2) The deposit of rent under sub-section (1) shall be made within such time and in such manner as may be prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate or revisional authority, as the case may be, shall, on application made either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate or revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subjected to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf."

8. The Appeal Court missed that Section 32(4) does not contemplate an automatic eviction order no sooner it is established that the tenant has failed to pay or deposit the rent within 30 days from the date of institution of the proceedings. Further, the proceedings can be stopped, and eviction can be ordered only when

the tenant fails to show sufficient cause why further proceedings should not be stopped and an eviction ordered. This aspect of the matter and the settled law on the subject was not considered by the Appeal Court, which proceeded on the basis that once there is a default in the rent deposit within 30 days, the proceedings must stop, and the eviction must follow.

9. Section 32(4) may not refer to the service of formal show cause notice upon a tenant who may have defaulted in depositing the rent within 30 days. However, Section 32(4) clearly contemplates that an opportunity must be granted to the tenant not simply to explain why there was a failure to deposit rent within 30 days but why despite such failure, no order for stoppage of proceedings and his eviction should be made.

10. In *Bertalinha C. Novaes e Lourenco Vs F. X. Paulino Dias Souza and others*¹, this Court has held that Section 32(4) of the said Act does not provide that no sooner there is any default on the part of the tenant in depositing the rent, the Rent Controller or the Appellate or the Revisional Authority must, in every case, stop all further proceedings and make a direction to the tenant to put the landlord in possession of the building. Section 32(4) contemplates an opportunity for the tenant to show sufficient cause, not just for the default in the deposit of rent but why all further proceedings should not be stopped

¹ WP 912 of 2019 decided on 10.07.2023

and an order made to put the landlord in possession of the said building.

11. In *Roque Antonio Judas Tadeu Caetano Ribeiro Vs Angelo Cassiano Neves e Souza and Ors*², the Division Bench of this Court has held that it is not mandatory for the Rent Controller to make an order stopping the proceedings under Section 32(4). Still, the power is directory and at his judicial discretion, keeping in mind that the Act is beneficial legislation. Though the word “*shall*” is used in Section 32(4) in the context of the tenant's right to show sufficient cause to the contrary, it must be read as “*may*” and as vesting discretion in the authorities to make order of stopping the proceedings and directing the tenant to put the landlord in possession only after taking into consideration all the facts and circumstances.

12. The Division Bench held that some of the factors which the Rent Controller should bear in mind while exercising his discretionary power would be whether the default is willful or unintentional, whether it is for a short period or long period, whether it is stray or persistent, whether the payment was made at the first opportunity or after contest, whether the default is bonafide or to harass the landlord. These are only illustrative, and all such circumstances must be considered.

13. Incidentally, in this case, neither was any formal application filed by the landlords under Section 32(4), nor did the Appeal Court

² 1989(2) GLT 313

issue any formal notice requiring the tenants to show cause in terms of Section 32(4). The issue of the necessity of a formal application or a show cause notice is neither raised nor is the same being decided. But this aspect shows that the Appeal Court was perhaps not alive to the legal position concerning the scope of Section 32(4). Therefore, opportunity, as contemplated, was not granted to the tenants.

14. Since the Appeal Court has not followed the above position in law, the impugned order dated 06.01.2022 stopping further proceedings and ordering the tenant's eviction warrants interference.

15. Similarly, the Appeal Court's order permitting the tenant to deposit the rent under Section 18 of the said Act contradicts to a certain extent with the impugned order dated 06.01.2022, which is challenged in the tenant's petition. As a result of this order, a piquant situation has arisen. On the one hand, the Appeal Court holds that there was no sufficient cause for delayed deposit under Section 32 of the said Act. On the other hand, the Appeal Court holds that there was sufficient cause to allow the application under Section 18 of the said Act for the rent deposit. Such conflicting orders cannot stand, at least for the present.

16. The application under Section 18 and a determination under 32(4) are independent proceedings or issues. But consideration of such issues presupposes an independent address to the parameters of the two provisions. In a given case, the pendency of an application under

Section 18 or even the merits of such an application may constitute sufficient cause not to stop further proceedings under Section 32(4). In a given case, if any malafides are involved in applying under Section 18, that aspect may also influence the discretion under Section 32(4). To that extent, there may be no contradiction. But in the present case, contradiction results mainly because the Appeal Court was not alive to the scope of the provisions.

17. Accordingly, a case is made out also to set aside the Appeal Court's order dated 06.01.2022 which is challenged by the landlords in Writ Petition No. 146 of 2022. For all the above reasons, both the impugned orders are set aside, and the matter is remanded to the Appeal Court for fresh consideration of the tenant's application under Section 18 of the said Act and the effect of Section 32(4) of the said Act to the facts and circumstances on the record.

18. Mr Pereira states that no formal application has been filed under Section 32(4) of the said Act in such a case before the Appeal Court. The landlords may file such an application if desired. But in the peculiar facts, leave is granted to the tenant to file a response and show cause as to why an order under Section 32(4) should not be made against him even without a formal application from the landlords.

19. The Appeal Court can fix a timetable within which the applications or responses could be filed. But such pleadings must be completed within a month from 07.08.2023.

20. The rule is made absolute to the above extent in both petitions without any order for costs.

21. The parties/their counsel are to appear before the Appeal Court on 07.08.2023 at 10.00 a.m. and file an authenticated copy of this order.

22. The Appeal Court must dispose of the proceedings before it as expeditiously as possible and, in any case, within eight months from the date the authenticated copy of this order is filed before it.

M. S. SONAK, J.