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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.176 OF 2021**

SCHOOL ANJUMAN NOORUL ISLAM,  
Panaji, represented by its  
Secretary,  
Shaikh Mhammed Iqbal  
Aged 68 years,  
Panaji-Goa -  
403401.

... Petitioner.

*Versus*

1. Shri Joao De Andrade E Souza,  
(Since deceased) who was  
Represented by his legal heir  
Dr. Luis Sales Andrade E Souza,  
(who since deceased) is represented  
by his legal heirs:

1.(a) Mrs. Flavia Maria Do Ceu  
Ferreira Rangel Andrade e Souza,  
Widow of applicant,  
r/o House no.6/33, Arrarim,  
Sonarbhat, Saligao, Bardez, Goa  
(Since deceased represented by LR's  
Respondent no.2 to 9

1.(b) Dr. Jose Rangel Sales de  
Andrade E Souza, son, Aged 60  
r/o House no.6/33, Arrarim,  
Sonarbhat, Saligao, Bardez, Goa

1.(c) Mrs. Jin Sun Lee,  
(daughter-in-law of the deceased)  
Major, r/o Pracheta Francisco Sa

Miranda, No-5, 40 Esq,  
2700 Amadora Portugal.  
(Deleted as per Order dated 17.11.2018 passed on  
Exh.D-13)

1.(d) Mr. Francisco Sales De  
Andrade E Souza, Aged 55,  
major, son, r/o House no.6/33,  
Arrarim, Sonarbhat,  
Saligao, Bardez, Goa.

1.(e) Mr. Luis Sales De Andrade E Souza,  
Major, son, Aged 54  
major, son, r/o House no.6/33,  
Arrarim, Sonarbhat,  
Saligao, Bardez, Goa

1.(f) Mrs. Mona Liza Vaz  
Andrade E Souza, Aged 50  
daughter-in-law,  
r/o House no.C-1, 209,  
Corte de Oiteiro, Panaji-Goa.

1.(g) Mrs. Nalini Andrade E Souza,  
Dauthter,

1.(h) Mr. Jose Manuel Ribeiro Cabral,  
Son-in-law, r/o rua Aquilino Ribeiro,  
34-30 B, 2795-468,  
Carnaxide-Portugal.

1.(i) Mrs. Ana Olimpia Andrade E Souza,  
Daughter  
(Respondents no.7 to 9 deleted as per the Order  
dated 17.11.2018 passed on Exh.D-13)

1.(j) Mr. Francisco Marques Silveira  
E Pereira, son-in-law, Aged 40

r/o Muddawadi,  
Saligao, Bardez-Goa.

... Respondents.

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

**Mr M.B. D'Costa, Senior Advocate with Mr Rehan Abbasi,  
Advocate for the Respondents.**

**CORAM: BHARAT P. DESHPANDE, J.**  
**RESERVED ON: 21 February, 2023**  
**PRONOUNCED ON: 01 March, 2023**

**JUDGMENT:**

Rule. Rule returnable forthwith. The matter is taken up for final disposal at the admission stage with the consent of the parties.

2. Heard learned Counsel Mr Kaif Noorani for the Petitioner and learned Senior Counsel Mr M.B. D'Costa appearing with learned Counsel Mr Rehan Abbasi for the Respondents.

3. With the assistance of the learned Counsel appearing for the parties, I have perused the entire record and more specifically the grounds.

4. Mr Kaif Noorani appearing for the Petitioner submitted that the rent case was decided by the authority without jurisdiction as at the relevant time, the Goa Buildings (Lease, Rent & Eviction) Control Act, 1968 was not made applicable to the City of Panaji. In this respect, he relied upon notification issued by the Government from time to time and more specifically five notifications published on 30.09.1969. He would

submit that Section 1(2) of the Rent Act gives power to the Government to extend the said Act and its provisions from time to time by issuing separate notifications. He submits that notification dated 30.09.1969 clearly excluded the Town of Panaji. According to him, the Act was notified for entire Goa from 23.12.1980. Thus, the proceedings filed by the Respondent in the year 1976 before the Rent Controller and specifically under the provisions of Rent Control Act, 1968 were without jurisdiction.

5. The second submission of Mr Noorani is that the Rent Controller on 24.09.1983 observed in the Roznama that the case is fixed for orders which was supposed to be communicated to the parties. According to Mr Noorani, no such order was passed or ever communicated to the parties by the same Presiding Officer or by any other officer, till the time when the Applicant received notice in the execution proceedings filed by the Respondent to execute the order/judgment passed by the Rent Controller dated 20.11.1985. Such execution proceedings were filed in the year 2003. Only after receipt of such notice, the Petitioner approached the Rent Controller and obtained certified copy. Only thereafter the Petitioner approached the Administrative Tribunal of Goa in Rent Appeal No.8/2016, who condoned the delay. In the meantime, the jurisdiction to decide rent appeals was conferred on the District Court and accordingly the appeal was registered as Rent Appeal No.8/2016 before the District Court, North Goa, Panaji. Vide Judgment dated 01.04.2019, the appeal was dismissed thereby confirming the order of eviction, which is challenged in the present petition.

6. Mr Noorani submitted that the person who heard the matter as the Rent Controller, was not the same person who decided the rent eviction proceedings and that the judgment which was passed is a handwritten judgment, having many corrections in it. He submitted that the officer who decided the rent eviction proceedings as Rent Controller did not give any opportunity to the Petitioner to argue the matter and therefore, there is clear violation of principles of natural justice. In this respect, he relied upon the following decisions:-

- a) *Nirmala Kashinath Rau and Ors. vs. Smt. Ratan Vassudev Dhempe and Ors*<sup>1</sup>,
- b) *Automotive Tyre manufacturers Association vs. Designated Authority and Ors*<sup>2</sup>,
- c) *Celina Almeida vs. Minister of Urban Development, Goa and Ors.*<sup>3</sup>, and
- d) *Saurav Jain and Anr. vs. A.B.P. Design and Anr.*<sup>4</sup>.

7. The learned Senior Counsel Mr M.B. D'Costa appearing for the Respondents would submit that first of all, the issue which is now raised before this Court regarding violation of principles of natural justice and not giving opportunity to the Petitioner by the Officer who decided the eviction proceedings, was not at all raised before the Administrative Tribunal. Even otherwise, Mr D'Costa would submit that such arguments would not be helpful as a handwritten judgment was thereafter permitted to be typed as per the orders of the Administrative

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1 2002 (4) Mh.L.J. 568

2 (2011) 2 SCC 258

3 2013 (4) Mh.L.J. 53

4 2021 SCC OnLine SC 552

Tribunal and that too with the consent of the parties. The Petitioner nowhere raised any such objection to the impugned judgment passed by the Rent Controller. According to Mr. D'Costa, the order dated 06.10.2008 passed by learned Administrative Tribunal speaks volumes and now the Petitioner cannot be allowed to approbate and reprobate.

8. Mr D'Costa then would submit that the Rent Control Act was made applicable to the City of Panaji wherein the suit property exists, from the inception of the Act itself, which is clear from Sub-Section 1(2) and the cities of Panaji, Margao, Mapusa and Vasco were included at the first instance where the Act was extended. Later on, provisions of this Act were then extended to the areas of a belt of 2 kms. around the limits of the City of Panaji vide notification dated 30.09.1969. Therefore, proceedings filed under Section 22 of the Rent Control Act for eviction were tenable and the Rent Controller was very much having jurisdiction to consider and decide the applications. Mr. D'Costa then would submit that as per Section 36 of the said Act, the Administrator was empowered to enforce provisions of the said Act in any local area from such date as may be notified in the Official Gazette. Finally, he submitted that no prejudice was caused to the Applicant as the delay was condoned by the Tribunal and his appeal was heard on merit. Mr. D'Costa then submits that on merit, no case has been made out or even argued so as to interfere with the impugned orders.

9. The rival contentions fall for consideration as under.

1. Whether the provisions of Rent Control Act, 1968 were made applicable to the City of Panaji since inception.

2. Whether the impugned order suffers from violation of principles of natural justice.

10. Government of Goa enacted the Goa Buildings (Lease, Rent & Eviction) Control Act, 1968. Chapter I deals with preliminary wherein Section 1 reads thus:-

*“1. Short title, extent and commencement. — (1) This Act may be called the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968.*

*(2) \*It extends, in the first instance, to the cities of Panaji, Margao, Mapusa and Vasco (including the Harbour area) but the Administrator may, from time to time, by notification in the Official Gazette extend this Act or any provision thereof to any other area in the said Union Territory.*

*(3) \*\*It shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint:*

*Provided that different dates may be appointed for different provisions of this Act and for different areas and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*

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1 In the heading the words, “Daman and Diu” were omitted vide Amendment Act No. 14 of 2013 published in the Official Gazette, Series I No. 8 (Extraordinary) dated 24-05-2013

2 These words and figures have been substituted for the words and figures “Act 15 of 1968” by Corrigendum No. LD/2A/2/N-21-69 dated 2-7-1969. (Official Gazette, Series I No. 15 dated 10-7-1969).

3 The words have been substituted for the words “Union Territory of Goa, Daman and Diu.

\* The Act has been extended w.e.f. 23-12-1980, Notification No. RD/BLDG/77/69-II dated 23-12-1980 and No. 10/6/87-RD dated 1-6-1988.

4 Substituted by Amendment Act 2013, (Goa Act 14 of 2013) published in the Official Gazette, Series I No. 8 dated 24-5-2013.

\*\* The Act has been enforced w.e.f. 30-9-1969 – Notification Nos. RD/BLDG/77/69-III, RD/BLDG/77/69-IV dated 30-9-1969 and 10-6-87-RD dated 22-2-1988.

11. The notifications dated 30.09.1969 bearing Nos.II, III, IV, V and VI read thus:-

## “RD/BLDG/77/69-II

In exercise of the powers conferred by sub-section (2) of Section 1 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act No. 2 of 1969), the Administrator of Goa, Daman and Diu is pleased to extend the said Act to the areas specified in column 3 of the schedule hereto.

| Sr. No. | Taluka   | Area                                                                                                    |
|---------|----------|---------------------------------------------------------------------------------------------------------|
| 1       | 2        | 3                                                                                                       |
| 1.      | Goa      | (i) A belt of 2 kilometres around the limits of the city of Panaji;                                     |
|         |          | (ii) The villages of Caranzalem, Dona Paula, Santa Cruz Alto de Bambolim, Mercês, S. Pedro and Chimbél. |
| 2.      | Salcete  | (i) A belt of 2 kilometres around the limits of the city of Margao;                                     |
|         |          | (ii) The villages of Navelim, Nuvem, Aquem and Davorlim.                                                |
| 3.      | Bardez   | (i) A belt of 2 kilometres around the limits of the city of Mapusa;                                     |
|         |          | (ii) The villages of Betim, Alto de Porvorim and Guirim.                                                |
| 4.      | Marmagao | (i) A belt of 2 kilometres around the limits of the city of Vasco da Gama, including the Harbour area;  |
| 5.      | Bicholim | (i) The town of Bicholim and a belt of 2 kilometres from the limits of the said town;                   |
|         |          | (ii) The village of Sanquelim.                                                                          |
| 6.      | Ponda    | (i) The town of Ponda and a belt of two kilometres from the limits of Ponda Town;                       |
|         |          | (ii) The villages of Curti and Queula.                                                                  |
| 7.      | Quepem   | (i) The town of Quepem and a belt of 2 kilometres from                                                  |
|         |          | (ii) The village of Curchorem and a belt of 2 kilometres around it;                                     |
|         |          | (iii) The village of Cacora.                                                                            |
| 8.      | Pernem   | (i) The town of Pernem and a belt of 2 kilometres from the limits of Pernem town;                       |

|     |          |                                                                                       |
|-----|----------|---------------------------------------------------------------------------------------|
| 9.  | Satari   | (i) The town of Valpoi and a belt of 2 kilometres from the limits of Valpoi town.     |
| 10. | Canacona | (i) The town of Canacona and a belt of 2 kilometres from the limits of Canacona town. |
| 11. | Sanguem  | (i) The town of Sanguem and a belt of 2 kilometres from the limits of Sanguem town.   |
| 12. | Daman    | (i) A belt of 2 kilometres around the limits of the town of Daman (Nani and Moti).    |
| 13. | Diu      | (i) The town of Diu and a belt of 2 kilometres from the limits of the said town.      |

By order and in the name of the Administrator of Goa, Daman and Diu.

*W. G. Ranadive*, Secretary (Revenue).

Panaji, 30th September, 1969.

(Published in the Government Gazette (Supplement), Series I No. 26 dated 30-9-1969).

### Notification

RD/BLDG/77/69-III

In exercise of the powers conferred by sub-section (3) of Section 1 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act No. 2 of 1969), the Administrator of Goa, Daman and Diu is pleased to appoint the first day of October, 1969, as the day on which all the provisions of the said Act, except Chapter VII, shall come into force throughout the areas to which the said Act has been extended under the said Act and the Government Notification No. RD/BLDG/77/69-II, dated 30th September, 1969.

By order and in the name of the Administrator of Goa, Daman and Diu.

*W. G. Ranadive*, Secretary (Revenue).

Panaji, 30th September, 1969.

8th Asvina, 1891.

(Published in the Government Gazette (Supplement), Series I No. 26 dated 30-9-1969).

### Notification

RD/BLDG/77/69-IV

In exercise of the powers conferred by Section 36 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act No. 2 of 1969), the Administrator of Goa, Daman and Diu is pleased to direct that the provisions of Chapter VII of the said Act shall come into force in the cities of Panaji, Mapusa, Margao, Vasco-da-Gama (including the Harbour area) and Ponda with effect from 1st October, 1969.

By order and in the name of the Administrator of Goa, Daman and Diu.

*W. G. Ranadive*, Secretary (Revenue).

Panaji, 30th September, 1969.

8th Asvina, 1891.

(Published in the Government Gazette (Supplement), Series I No. 26 dated 30-9-1969).

#### **Notification**

RD/BLDG/77/69-V

In exercise of the powers conferred by sub-section (1) of Section 41 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act No. 2 of 1969), the Administrator of Goa, Daman and Diu is pleased to constitute every Civil Judge, Senior Division, to be the Rent Tribunal within his respective local jurisdiction and the District Judge, Panaji to be the Appellate Board for the purposes of the said Act.

By order and in the name of the Administrator of Goa, Daman and Diu.

*W. G. Ranadive*, Secretary (Revenue).

Panaji, 30th September, 1969.

8th Asvina, 1891.

(Published in the Government Gazette (Supplement), Series I No. 26 dated 30-9-1969).

#### **Notification**

RD/BLDG/77/69-VI

In exercise of the powers conferred by clause (a) of sub-section (2) and sub-section (3) of Section 41 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act No. 2 of 1969), the Administrator of Goa, Daman and Diu is pleased to appoint the Deputy Collector, Goa North Sub-Division and the Deputy Collector, Goa South Sub-Division, the Collector of Daman and the Civil Administrator of Diu, as Authorised Officers and Controllers for the purposes of the said Act and to further direct that they shall

perform the functions of an Authorised Officer and a Controller under the provisions of the said Act within the areas of their respective jurisdiction.

By order and in the name of the Administrator of Goa, Daman and Diu.

W. G. Ranadive, Secretary (Revenue).

Panaji, 30th September, 1969.

8th Asvina, 1891.

(Published in the Government Gazette (Supplement), Series I No. 26 dated 30-9-1969).

12. Plain reading of the contents of Section 1 together with the above notifications issued on 30.09.1969 would go to show that the said Act was passed by the Legislative Assembly which received assent of the President of India on 22.02.1969.

13. Section 1(2) has to be construed by plain language used in it wherein the first part clearly and unambiguously mention that the provisions of this Act extends in the first instance to the cities of Panaji, Margao, Mapusa and Vasco including the Harbour area.

14. The second part of Section 1(2) starts from the words, “but the Government may”. It clearly shows that discretion was given to the Government by issuing notifications in the Official Gazette to extend provisions of the said Act or any provision thereof to any other area in the State of Goa.

15. The contention of Mr Noorani is that the asterisk mark at the start of the section and more particularly in Sub-Section 2 has to be read with the note down which reads thus:-

*“The Act has been extended with effect from 23.12.1980, Notification No. RD/BLDG/77/69-II dated 23-12-1980 and No. 10/6/87-RD dated 1-6-1988.”*

16. Mr Noorani would submit that the said asterisk appearing just at the start of Sub-Section 2 needs to be read along with the contents in the note which clearly shows that the Act has been extended with effect from 23.12.1980 vide Notification No.RD/BLDG/77/69-II, as quoted above wherein at Sr. No.1 it is clearly stated that the said Act was extended to the areas specified in Column No.3. Mr Noorani would therefore submit that vide this notification dated 30.09.1969, the Act was only extended to the belt of 2 kms. around the limits of city of Panaji but not to the city of Panaji. He tried to canvas his argument by pointing out the same notification which refers to Bicholim at Sr. No.5 wherein the wordings refer to the town of Bicholim and a belt of 2 kms. from the limits of the said town. Thus, it was contended by Mr Noorani that the words of city of Panaji is missing at Sr. No.1 in the said notification and it only refers to a belt of 2 kms. around the limits of the city of Panaji. In other words, Mr Noorani's contention is that the said Act of 1969 was not extended to the cities of Panaji, Margao, Mapusa and Vasco at the first instance and that it was only extended in the year 1980.

17. I am not inclined to accept such submissions at all for the simple reason that Section 1(2) first of all clearly and unambiguously discloses that the provision of the Act of 1969 were extended at the first instance to the cities of Panaji, Margao, Mapusa and Vasco including Harbour area. Thus, it simply means that when the assent of the President of India was received on 22.02.1969 and when the said Act was published in the Government Gazette, it was made applicable immediately to these cities including Panaji.

18. The second part of Sub-Section 1(2) gives the powers to the Government to extend the provisions of said Act by issuing separate notifications which is found in Section 36 of the said Act.

19. The Notification No. RD-BLDG/77/69-II dated 30.09.1969 is therefore extending the provisions of said Act to the areas other than the cities of Panaji, Margao, Mapusa and Vasco and that is how Column No.3 of this notification refers to “a belt of 2 kms. around the limits of city of Panaji.”

20. The submissions of Mr Noorani about extension of the provisions of this Act to the city of Panaji only in the year 1980 is therefore devoid of merit. Such submissions are clearly against the provisions of Rent Control Act. When the contents of Section 1(2) of the said Act are clearly unambiguous, plain and simple, same cannot be distorted and that too on the basis of asterisk mark found at the beginning of Sub-Section 2 of Section 1. Such asterisk mark refers to the note below the said section which cannot be considered as applicable to the entire contents of Sub-Section 2. It only refers to the second part which gives power to the Government to extend provisions of this Act by issuing notifications from time to time.

21. Sub-Section 3 of Section 1 provide that the Act shall come into force on such date as the Government may by notification in the Official Gazette, appoints. The said Act was notified in the Government Gazette with effect from 30.09.1969 vide Notification No. RD/BLDG/77/69/III, which is quoted above. The wordings of this notification show that the powers under Section 1(3) were exercised by the Administrator who was

pleased to appoint 01.10.1969 as the day on which all provisions of the said Act, except Chapter VII, shall come into force throughout the areas to which the said Act has been extended under the Act and the Notification No.RD/BLDG/77/69/II dated 30.09.1969.

22. A cojoint reading of the above provisions and the notifications referred hereinabove, would clearly go to show that from 01.10.1969, the entire Act except Chapter VII came into force including the cities of Panaji, Margao, Mapusa and Vasco, together with a belt of 2 kms. around the limits of the city of Panaji.

23. Thus, the submission of Mr Noorani regarding implementation of the provisions of the Act of 1969 to the city of Panaji only with effect from 23.12.1980, is certainly unacceptable. The provisions of this Act came into force for the city of Panaji and a belt of 2 kms. around it from 01.10.1969 itself.

24. Second argument of Mr Noorani is that the Rent Controller after closure of the proceedings, noted in the Roznama dated 24.09.1983 as under:-

*“Adv. for both sides present. They have filed their written arguments. Case is fixed for orders which will be communicated.”*

25. Mr Noorani would submit that this order was passed by earlier Rent Controller whereas the Judgment was pronounced by subsequent Rent Controller and that too without giving any opportunity to the parties to be heard. He also submitted that such order was never communicated to the parties.

26. Mr Noorani pointed out that the signature appearing in the Roznama dated 24.09.1983 is completely at variance with the signature of the Rent Controller appearing in a handwritten Judgment. On this count only, Mr Noorani would submit that the matter was decided by a different Rent Controller.

27. Mr D'Costa for the Respondent would submit that there is no material at all produced by the Applicant/Petitioner either before this Court or before the Administrative Tribunal /District Court to substantiate such arguments. Mr D'Costa would submit that the signature in the Roznama is only a short signature or initials and therefore, such comparison as tried to be projected is totally absurd. He would submit that the Judgment was delivered by the officer empowered to decide the case.

28. The submission advanced by Mr D'Costa, the learned Senior Counsel for the Respondent are having substance. First of all, there is nothing on record to show that the Rent Controller who passed the order in the Roznama dated 24.09.1983 is not the same officer who decided the case finally vide its Judgment dated 20.11.1985. Only on the basis of signature or initials in the Roznama with that of the signature below the Judgment, it cannot be presumed that the same are of two different officers.

29. It is no doubt true that the certified copy issued to the Petitioner of the Judgment passed by the learned Rent Controller is a handwritten copy bearing signature of the Presiding Officer. It is also true that the

same Presiding Officer vide letter dated 25.11.1985 informed by the parties about the operative order passed by the Court, which reads thus:-

|                                                                                                                                                                                         |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| <i>Shri Joao de Andrade e Souza,<br/>resident of Panaji.</i>                                                                                                                            | <i>“Case No: Rent/26/76.</i> |
| <i>vs.</i>                                                                                                                                                                              | <i>..... Applicant</i>       |
| <i>School of Anjuman Noorul Islam,<br/>with its office at Panaji<br/>represented by its Secretary<br/>Ali Shah alias Ali Sahab,<br/>clerk of the Central Bank of<br/>India, Panaji.</i> | <i>..... Respondent.</i>     |

*The operative portion of the order passed by this Court on 20.11.1985 is transcribed below for your information and necessary action:*

*“The application dated 04.05.1970 (pages 1 to 3) filed by the applicant is allowed. The Respondent is directed to put the applicant in possession of the suit premises within a period of 90 days from the date of receipt of this Order.”*

|                                     |                                                                                                     |
|-------------------------------------|-----------------------------------------------------------------------------------------------------|
| <i>Panaji:<br/>Dated 25.11.1985</i> | <i>sd/-<br/>( G. V. P. Dessai )<br/>Additional Rent Controller<br/>Goa North Division, Panaji.”</i> |
|-------------------------------------|-----------------------------------------------------------------------------------------------------|

30. Mr Costa, the learned Senior Counsel appearing for the Respondent would submit that it was the practice before the Rent Controller that he would intimate only the operative part of the order to the concerned parties, who then would apply for grant of certified copy of the judgment or order, as the case may be. Thus, the intimation was given to the Petitioner about the order passed by the Mamlatdar in the said Rent Control matter, which is evident from the letter dated

25.11.1985. This aspect has not been controverted by learned Counsel for the Petitioner.

31. Even otherwise, when the Petitioner received certified copy of the eviction order passed by the learned Mamlatdar, he immediately applied for condonation of delay together with appeal challenging it before the learned Administrative Tribunal, Goa.

32. It shows that only on the basis of letter dated 25.11.1985 quoted above, the Petitioner filed the appeal before the learned Administrative Tribunal with an application for condonation of delay. This application was registered as MISC. No.31/05/CONDONE in Eviction Appeal (UN-REG.). When the Respondent appeared and raised preliminary objection to the maintainability of appeal on the ground that no copy of Judgment of the Rent Controller is produced, Counsel for the Petitioner submitted that there is no judgment available and only operative portion of the order was furnished to them. The learned Administrative Tribunal therefore called for the records and proceedings and observed that the learned Rent Controller had written the Judgment in hand which is duly signed with rubber stamp. The learned Administrative Tribunal also observed that the said handwritten Judgment is not fully legible. On observing this, Advocate appearing for the Petitioner and that of the Respondents specifically agreed and submitted that the matter be sent to Rent Controller for getting handwritten Judgment typed and on its completion, return the records and proceedings to the Tribunal to decide the matter.

33. In these circumstances, the learned Administrative Tribunal passed the order dated 06.10.2008 which reads thus:-

“

**ORAL ORDER**

*This unregistered Eviction Appeal has been filed by the Appellant with application for condonation of delay alongwith the Appeal Memo. The order impugned is only the operative portion of the order dated 25.11.1985 passed by the Addl. Rent Controller.*

*2. The Advocate for the Respondents raised preliminary objection on the maintainability of the Appeal submitting that, there is no Judgment of the Rent Controller, produced with the Appeal Memo. Advocate for the Appellant submitted that, there is no Judgment in the records of the Lower Court and what was available was only the operative portion of the order which has been impugned by filing Appeal. Records of proceeding from the Lower Court are called for. On careful examination of the records, it is noticed that the Ld. Rent Controller has written the Judgement in hand and the same has been signed with his stamp. However, the said Judgement is not legible. Advocate for both the parties submitted that the matter be sent to the Rent Controller, Panaji for getting Judgement typed and on its completion to return back the file to this Tribunal to proceed with the matter. Under such circumstances, in which the Judgment written by the Rent Controller is on the record, I have no other alternative but to return file to Ld. Rent Controller, Panaji to have the Judgement typed and return to this Tribunal as early as possible. Hence, order is hereby passed sending the matter to the Rent Controller, Panaji to have the same typed. The Rent Controller, Panaji shall have the Judgement typed and issue certified copy of the same to the Appellant so as to enable the Appellant to produce the same on the record of the file of this Tribunal alongwith the Appeal Memo.”*

34. In the meantime, the matter was placed before the District Court, North Goa, Panaji. The application for condonation of delay filed along

with the Appeal was accordingly registered as Civil Misc. Application No. 98/2013. The learned District Judge-1, Panaji vide its order dated 15.06.2016 decided the application for condonation of delay and allowed the said application thereby condoning the delay.

35. The appeal challenging the order passed by the learned Mamlatdar in Eviction Proceedings was registered as Rent Appeal No.8/2016. After hearing both the parties, the learned District Judge-1, North Goa, Panaji vide its Judgment dated 01.04.2019, dismissed the said Appeal and confirmed the order of the learned Mamlatdar thereby directing the tenant to put the landlord in possession of the suit premises within 60 days. Said order of the learned District Judge-1 is impugned herein.

36. The learned Judge while dismissing the appeal, framed two points for determination which are found in para no. 7 and reads thus:-

*“1. Whether the Applicant has proved that the Respondent was in arrears of rent due to which Respondent was liable to be evicted?”*

*2. Whether the Applicant proved that the Respondent has ceased to occupy the premises for a continuous period of four months without reasonable cause?”*

37. It thus shows that the grounds which are now raised in the present petition, were not at all raised before the First Appellate Court. Even otherwise, the learned First Appellate Court has considered the matter on merit and answered the first point regarding arrears in affirmative. Even the second point with regard to the premises kept without occupation for continuous period of four months is answered in

affirmative. Finally, the learned Judge observing that the ground raised that the order was not communicated, does not survive as the application for condonation of delay was allowed and no prejudice was caused since the matter was heard on merit.

38. In the case of *Nirmala Kashinath Rau* (supra), in fact, the observations of this Court would support the Respondents in connection with enforcing the provisions of Rent Control Act and more specifically Section 2(1) from the inception except the portions which were specifically brought within its ambit. The scheme of the said Act is discussed from para nos.23 to 25. In that case, the building was in Village Nerul which was admittedly outside the notified area when the suit was filed on 04.02.1980 and thus, this Court considered that the said disputed building was governed by the Decree No.43525. Thus, said decision is of no help to the Petitioner.

39. In the case of *Automotive Tyre manufacturers Association* (supra), the Apex Court extensively dealt with the aspect of natural justice and observed that it is trite that rules of “natural justice” are not embodied rules. The phrase “natural justice” is also not capable of a precise definition. The underlying principle of natural justice evolved under the common law is to check arbitrary exercise of power by the State or its functionaries. The principle implies a duty to act fairly i.e. fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Applying the same principles to the matter in hand, one thing is clear that by allowing application for condonation of delay in filing appeal, in fact, the authorities did exercise

the principles of fair play by giving an opportunity to the Petitioner to argue the matter on merit. Similarly, it is clear from the record that the contention raised by the Petitioner claiming that the officer who passed the Judgment did not hear the matter, is negated by the aspect of surmises and conjectures for want of another material to that effect. As earlier discussed, after conclusion of the inquiry, written submissions were filed by both the sides and the matter was closed for orders to be communicated to the parties. No doubt, the Rent Controller failed to communicate final order to either of the parties, it was brought to the notice of the Respondent only when they applied for copy of the decision in the matter. Therefore, such inaction on the part of Rent Controller not only affected the Petitioner but also the Respondent. The letter was addressed to both the parties. However, the learned First Appellate Court while condoning the delay in filing appeal observed that such action on the part of Rent Controller was totally incorrect. With the consent of the parties, records and proceedings from the Rent Controller were called and on perusal, the handwritten judgment duly signed and stamped was found in the record. This handwritten judgment was then typed and given to the parties for the purpose of challenging it. Therefore, by exercising powers and observing the principles of natural justice, the learned First Appellate Court allowed delay condonation application filed by the Petitioner and heard the appeal on merits.

40. At this stage, it is necessary to note that no arguments were advanced as far as merits of the matter are concerned. The only challenge to the orders passed by the Court below is as discussed earlier. Therefore, as far as merits are concerned, there is no challenge thrown

on it on behalf of Petitioner. Considering this, the decision of Apex Court in the case of *Automotive Tyre manufacturers Association* (supra) is in fact complied with as far as natural justice is concerned.

41. In the case of *Celina Almeida* (supra), the Petition was filed on the ground that no opportunity was given to the Petitioner of hearing before decision of the appeal. It is not the case of the Petitioner at all in the present proceedings that he was not given hearing by the Rent Controller. The record speaks otherwise. Only after closing the matter for orders, same was not communicated to the parties though prepared as handwritten judgment duly signed and stamped. Therefore, the decision in the case of *Celina Almeida* (supra) is not of help to the Petitioner.

42. In the case of *Saurav Jain* (supra), Apex Court was dealing with the aspect of raising a ground challenging jurisdiction even at appellate stage. There is no dispute about the said proposition. However, raising a ground for jurisdiction, first time in a writ petition when it is purely based on the facts and circumstances of the case could be taken up. In this case, the Petitioner has raised such ground of jurisdiction of the Rent Controller to entertain and decide eviction proceedings filed in the year 1976 on the ground that the Rent Control Act, 1969 was not made applicable to the city of Panaji. As discussed earlier, the Act was made applicable to four cities including Panaji from the inception i.e. from the date when the Act came into force (01.10.1969).

43. Having said so, the grounds challenging the impugned orders are devoid of merit.

44. In the result, the Writ Petition stands dismissed. Parties shall bear their own cost. Rule discharged.

**BHARAT P. DESHPANDE, J.**

**JUDGMENT CONTINUED**

45. Mr Noorani appearing for the Petitioner is requesting eight weeks time so as to facilitate the Petitioner to approach the Supreme Court. Vide order dated 11.10.2021, interim relief in terms of prayer clause (c) for the Petitioner was granted. Mr Noorani submits that execution proceedings are pending and there is every likelihood of issuance of warrant of possession on rejection of the petition today.

46. Considering the stay granted till today, in the interest of justice, the same is extended for a period of eight weeks.

**BHARAT P. DESHPANDE, J.**

JOSE  
FRANCISCO  
DSOUZA

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