

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.286 OF 2023

1. Ms. Kusum Pandari Naik
d/o Late Pandhari Naik
70 years of age, unmarried,
Indian National, service
2. Ms. Kumud Pandari Naik
d/o Late Pandhari Naik
54 years of age, unmarried,
Indian National,
both r/o Hno11/133/1,
Near Gomantak Press,
St. Inez, Panaji, Goa

... Petitioners

Versus

1. Mrs Kamal Soman Naik
Raikar @ Shobhavati N. Parpati,
(since deceased),
Through legal heirs,
1(a) Mr Ulhas Narcinva Parpati
alias Ulhas Raikar,
s/o late Narcinva M. Naik Parpati,
major of age, unmarried,
Indian National, Service,
r/o H. No.133, St. Inez,
Panaji-Goa.
1(b) Mr Somnath Narcinva Parpati
s/o late Narcinva M. Naik Parpati,
major of age, unmarried,
Indian National, Service,
r/o H. No.129, Parpatiwada,
Borim, Ponda-Goa.
1(c) Ms Zaiyu Narcinva Parpati,
s/o late Narcinva M. Naik Parpati,
major of age, unmarried,
Indian National, Service,
r/o H. No.129, Parpatiwada,
Borim, Ponda-Goa.
1(d) Mr Dattaram Narcinva Parpati

... Respondents

s/o late Narcinva M. Naik Parpati,
major of age, unmarried,
Indian National, Service,
r/o H. No.129, Parpatiwada,
Borim, Ponda-Goa.

**Ms Samiksha M Vaigankar, Advocate under Legal Aid
Services for the Petitioners.**

Mr Preetam Talaulikar, Advocate for Respondent No.1.1.

CORAM: M. S. KARNIK, J.

DATED : 14th June 2023

ORAL JUDGMENT:

1. Heard learned counsel for the petitioners-tenants and learned counsel for the respondents-landlords.
2. The premises in question is house bearing No.11/133/1 which was rented out to the petitioners-tenants by the respondent-landlord on a monthly rent of ₹20/- per month. On 15.04.2010 the landlord issued a notice to the tenants regarding increase of monthly rent towards occupation of the premises. Instead of Rs.20/- per month, the landlord enhanced the rent to Rs.500/- per month in view of the increase in cost of living and expenditure. The notice for enhancement was duly responded to by the tenants vide reply dated 15.05.2010. The ownership rights/title of the landlord in respect of the premises was disputed. The tenants called for clarification as to on what basis and under what provisions of law the rent of the premises can be enhanced in the manner as sought to be done by the landlord.

3. The landlord filed an application for eviction against the tenants under the provisions of Section 22(2)(a) and 22(2)(g) of The Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called as 'the said Act', for short). A reply to the said application was duly filed by the tenants. By application dated 01.10.2010 the tenants made an application under Section 22(3) of the said Act seeking permission for depositing the arrears of rent at the rate of Rs.20/- for the period January 2009 to January 2011 amounting to Rs.500/- together with the cost of the application. The Rent Controller, after considering the reply filed by the landlord, vide order dated 26.11.2010 allowed the application for depositing of the rent arrears. Further, the respondents were allowed to deposit the rent which may subsequently become due in respect of the suit premises @ Rs.20/- every month by challan in the bank, strictly within the period prescribed under Rule 7(2) of the Goa, Daman & Diu Buildings (Lease, Rent & Eviction) Control Rules, 1969 (hereinafter referred to as 'the said Rules' for short).

4. There is no dispute that upto December 2013 rent was deposited. The proceedings which were initially preferred before the Rent Controller came to be transferred in the year 2013 to the Court of the Civil Judge Junior Division at Panaji and the landlord as well as the tenants participated in the proceedings. On 13.03.2020 an application was made by the tenants for deposit of rent from the year 2014 till date @ Rs.20/- per month. Such application was opposed by the

landlord raising a preliminary objection that non-payment of rent regularly calls for eviction of the tenants from the rented premises as per the provisions of the said Act. Further details were given in the application as to the expenses incurred in maintaining the premises. It was also pointed out that the petitioner no.2 is a Government Servant and was receiving House Rent Allowance of Rs.1258/- in 2016 and with the passage of time it must have increased in 2022. It was the grievance of the landlord that the rent of Rs.20/- per month is a negligible amount which has to be increased with the passage of time. According to the landlord there is a breach of contract as a result of non-payment of rent and therefore prayed for the application to be rejected.

5. The trial Court disposed of the application for deposit of rent at Exhibit D-23(a) filed by the tenants vide order dated 23.11.2022. The application at Exhibit D-23(a) was rejected. Further, the Rent Eviction proceedings were stopped by the trial Court in terms of Section 32(4) of the said Act as the tenants failed to deposit the rent since January 2014 till date on regular basis.

6. This order of the trial Court dated 23.11.2022 was challenged by the tenants before the District Judge, Panaji by filing Rent Appeal No.16/2022. The appeal was filed under Section 45 of the said Act. For the reasons mentioned in the impugned order, the Appellate Court dismissed the appeal. The Appellate Court directed the tenants to hand over vacant

and peaceful possession of the suit premises to the landlord within a period 30 days.

7. Learned counsel for the petitioners-tenants submitted that the tenants cannot be termed as cantankerous tenants or willful defaulters. It is submitted that the tenants were always ready and willing to deposit the rent but for the reasons mentioned in the application which are bona fide, they could not deposit the rent from January 2014. It is submitted that in fact it is the tenants who filed the application on 13.03.2020 for permission to deposit the monthly rent. Learned counsel submitted that the landlord never made an application under Section 32(4) of the said Act for an order directing the tenants to put the landlord in possession of the building premises on the tenants failure to deposit the rent. It is the submission of learned counsel for the petitioners that in an application made by the tenants for deposit of rent, the course adopted by the Courts below in passing directions under Section 32(4) of the said Act is unwarranted. It is submitted that the application made by the tenant cannot be considered as the one made by the landlord under Section 32(4) of the said Act enabling the Court to pass such directions of putting the landlord in possession of the premises. No such application was made by the landlord. Without prejudice to the rights and contentions, learned counsel for the petitioners submitted, on instructions, that the tenants agree to the demand of the landlord for enhanced rent of Rs.500/- per month and are even willing to

deposit the arrears at the rate of Rs.500/- per month instead of Rs.20/- from the date of initial demand by the landlord for enhancement of rent. Learned counsel for the petitioners assured this Court that rent at the rate of Rs.500/- per month will be paid scrupulously hereafter without any default.

8. Learned counsel for the respondents on the other hand supported the impugned orders. He invited my attention to the reasonings recorded by the Courts below to justify his submission that the landlord deserves to be put in possession of the premises considering the nature of default on the part of the tenants. It is submitted that the tenants are not only willful defaulters but are dishonest litigants who have taken a dishonest stand by even denying the title of the landlord. It is submitted that it is not as if the default is for a few months but the default in the present case is for long years. Learned counsel relied upon the decision of this Court in the case of ***Vassant Tukaram Parab v/s. Aurolina Gomes*** in Writ Petition No.754 of 2009 decided on 30.01.2013 which disentitles the tenants from any relief much less a discretionary relief. Furthermore, learned counsel submitted that the provisions of Section 32(4) are categorical and as there is failure on the part of the tenants to deposit the rent, the Courts below have rightly directed stopping all further proceedings. Learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty And Another v/s. Rajendra Shankar Patil***¹ to

¹ (2010) 8 SCC 329

submit that the concurrent findings of the Courts below should not be interfered with lightly.

9. Heard learned counsel for the tenant as well as the landlord. Perused the paper book and the impugned order.

10. At the outset it would be pertinent to reproduce Section 32 of the said Act which reads thus:-

'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.'

11. Relevant to the present petition is also Rule 7 of the Goa Daman and Diu Building (Lease, Rent & Eviction) Control Rules 1969 which reads thus:-

7. Time within which and the manner of making a deposit of rent under Section 32. -

(1) A tenant against whom proceeding for eviction has been instituted by a landlord under the Act, shall deposit all arrears of rent due in respect of the building within one month from the date on which notice is served on him for the first time about the said proceedings before the Controller [or] the appeal or the revisional proceedings before the appellate or the revisional authority, as the case may be.

(2) The tenant referred to in sub-rule (1) shall deposit the rent which may subsequently become due in respect of the building within fifteen days from the date on which such rent became payable by him.

(3) The provision contained in sub-rules (1) to (3) of Rule 5 shall mutatis mutandis apply to deposits made under this rule.

12. Reading of the provisions of Section 32(4) reveals that if there is any failure on the part of the tenant to pay or to deposit rent as provided in Section 32, the Controller, 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.

13. No doubt the tenants have failed to pay the rent from 1st January 2014 till the date when the application was made on 13.03.2020 for depositing of rent. The Courts below were impressed by the fact that there is default of almost 7 years in depositing the rent at the rate of Rs.20/- per month and, therefore, this was a fit case for exercising the power under Section 32(4) of the said Act. The notice dated 15.04.2010 of the landlord to the tenants clearly stipulated the enhancement of rent from Rs.20/- per month to Rs.500/- per month from January 2009. Pursuant to the application for eviction filed under the said Act on 02.08.2020, an application was made by the tenants, firstly on 01.10.2010 for depositing the arrears of rent at the rate of Rs.20/- per month for the period January 2009 to January 2011. The Rent Controller by the order dated 26.11.2020 allowed the said deposit of arrears and further allowed the deposit of the rent which may subsequently become due and payable in respect of the suit premises @ Rs.20/- every month. The rent was regularly deposited till December 2013. It is pertinent to note that from January 2014 to March 2020, i.e. the date on which

an application was made by the tenants for depositing the arrears, there was no application filed by the landlord making a grievance regarding the tenants' failure to pay or deposit the rent and for an order directing the tenants to put the landlord in possession of the premises. This however does not absolve the tenants from depositing the rent regularly. According to me, the conduct of the tenants has also to be considered from the point of view that initially an application was made by the tenants to deposit the arrears @ Rs.20/- per month which order was complied till December 2013. No doubt the tenants failed to deposit the rent from January 2014 upto March 2020, however, the question is whether the tenants have been able to show sufficient cause for failure to deposit the rent. In the application made to deposit the arrears from 2014 till 13.03.2020, the tenants provided the cause as under:-

2. Initially when this case was pending before the Rent Controller, the respondents were permitted to deposit the rent due, amounting to Rs.20/- per month, before the said court; and accordingly the respondents were regularly depositing the said monthly rent.

3. Due to the amendment made to the Rent Act, this case came to be transferred from the Rent Controller to this hon'ble court.

4. Records of this case will reveal that various applications came to be filed on behalf of the respondents, which were disposed of this hon'ble court, as well as the appellate court.

5. Due to the pendency of the said applications and the appeal, the earlier advocate of the

respondents had instructed the respondents that once the said applications are decided only then, the issue/application pertaining to the deposit of rent during the pendency of this case, can be filed in this case.

6. In lieu of the said advice given to the respondents no previous attempt was made by the respondents in filing the application of the present nature.

7. Later on the records will reveal that this case was pending for settlement and there had been exchange of oral settlement offers made from each side, however, to the misfortune of the respondents the settlement was not fruitful and hence the case is now proceeding to decide the same on its merits.'

14. What is material is that it is the tenants who made an application for deposit of rent in March, 2020. Undoubtedly, the tenants ought to have been diligent in depositing the rent regularly. On an application made by the tenants to deposit the arrears, the Courts below have proceeded to pass an order under Section 32(4). No doubt, the trial Court has power to stop all further proceedings and make order directing the tenants to put the landlord in possession of the building if the tenant fails to pay or deposit the rent. There is a failure on the part of the tenants to deposit the rent. The question is whether sufficient cause has been shown by the tenants. For one, it is the tenants who had filed an application initially in the year 2010 for deposit of arrears, which the tenants complied till 2013. The reason why the tenants failed to deposit the arrears are spelt out in the application

enumerated hereinabove. All attending circumstances along with the cause shown in the application will have to be considered to come to a conclusion whether sufficient cause in terms of Section 32(4) is shown or not. Pursuant to the transfer of the proceedings from the Rent Controller to the Court of Civil Judge, Junior Division, since 2013, the matter progressed. The landlord never made an application under Section 32(4) of the Rent Control Act. I may hasten to add that this does not mean that the tenant is absolved of their obligation to pay the rent and deposit the arrears within the stipulated time in terms of the provisions of Section 32 of the Act. However, it needs to be taken into consideration that it is the tenants who again made an application in March 2020 for permission to deposit the arrears in which the cause for failure to deposit is stated.

15. During the course of the hearing, to test the bona fides of the tenants, I had called upon the tenants whether they are willing to deposit the arrears of rent at the enhanced rate of Rs.500/- per month and also regularly pay to the landlord rent @Rs.500/- per month from July 2023 without prejudice to the rights and contentions of the parties. Learned counsel for the tenants on instructions of the tenants, who are personally present in Court, submitted that they are willing to do so.

16. In my view, taking an overall view of the matter, I am of the considered opinion that sufficient cause is shown by the tenants in terms of Section 32(4) of the said Act. The Courts

below, misdirected themselves in considering the question only from the point of view that the tenants have failed to deposit the arrears since January 2014 till March 2020. Moreover, the circumstance that the application was filed by the tenants for permission to deposit the arrears of rent, in the course of which the landlord urged the Courts below to pass an order under Section 32(4), should have weighed with the Courts below, in the peculiar fact situation of this case. It is in the facts of this case I hold that in the application filed by the tenants for deposit of arrears, the Courts below should not have proceeded to pass an order under Section 32(4).

17. It is trite that the concurrent orders passed by the Courts below should not be easily interfered with in exercise of this Court's jurisdiction under Article 227 of the Constitution of India. It would be profitable to refer to the principles laid down by the Supreme Court for the exercise of High Court's jurisdiction under Article 227 of the Constitution of India in the case of ***Shalini Shyam Shetty And Another v/s. Rajendra Shankar Patil***, paragraph 49 reads thus:-

'49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called

a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just

because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases

but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.'

18. Seeking guidance from the law laid down, I must remind myself that in the exercise of power of superintendence, this Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. Jurisdiction under Article 227 has to be very sparingly exercised.

19. In the facts of the present case, I find that the Courts below misdirected themselves in construing the true scope of Section 32(4) while coming to the conclusion that the tenant has failed to show sufficient cause. The impugned order is therefore, set aside.

20. The Writ Petition is allowed in the following terms:-

(a) The impugned order is set aside. The application at Exhibit D-23(a) is allowed.

(b) The petitioners are directed to deposit the sum of Rs.75,000/- as undertaken by learned counsel for the

petitioners, on instructions, with the trial Court within a period of 2 months from today which the landlords are permitted to withdraw on undertaking.

(c) The petitioners shall pay to the landlord rent @ Rs.500/- per month commencing July 2023. In the event of any default, liberty to apply.

21. It is made clear that this arrangement is without prejudice to the rights and contentions of the parties and in view of the voluntary statement made by learned counsel for the petitioners, on instructions. The trial Court shall decide the main application on its own merits and in accordance with law. It is further made clear that it is open for the petitioners to make appropriate application for enhanced rent during the pendency of the application, which if made, shall be decided in accordance with law.

22. The petition is disposed of. No costs.

M. S. KARNIK, J.