

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.965/2019

MARIA ELSA LISBOA
FERNANDES (DEC) THR.
LRS. AND ANR.

... PETITIONERS

Versus

JOAQUINA FERNANDES
(DEC) THR. HER LRS.

... RESPONDENTS

Mr Anthony Joe D'Silva with Ms Kimberly Gracias,
Advocates for the Petitioners.

Mr J. P. Mulgaonkar, Senior Advocate with Ms Rupa
Banaulikar, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATED: 22nd February 2023

P.C.:

1. Heard Mr Silva for the petitioners and Mr Mulgaonkar, learned Senior Advocate who appears with Ms Rupa Banaulikar for the respondents.

2. The petitioners had instituted the proceedings for eviction against the respondents alleging that they were the tenants of the suit premises. The proceedings were instituted on the ground of

non-payment of rent and carrying out of material alterations to the suit premises. During the pendency of the proceedings, the Rent Controller found that the respondents did not deposit the rents in terms of Section 32 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (said Act). Based on this, the Rent Controller, vide order dated 18.12.2008 ordered the eviction of the respondents.

3. The respondents appealed to the appellate authorities vide Rent Appeal No.65/2013. The appellate authority, by the impugned order dated 07.03.2019, has set aside the Rent Controller's order dated 18.12.2008 but restored the eviction proceedings before the Rent Controller. The appellate authority has held that the Rent Controller should determine whether there is any landlord-tenant relationship given the stance of the respondents that they are not the tenants but they are the mundkars.

4. Mr Silva, the learned counsel for the petitioners states that even before the appeal court, the respondents had applied for leave to deposit the rent during the pendency. He submits that there is no declaration of mundkarship obtained but only a bald plea is raised about mundkarship. He therefore submits that the impugned order warrants interference.

5. Mr Mulgaonkar defends the impugned order based on the reasoning reflected therein. He submits that unless the issue of landlord-tenant relationship is sorted out, provisions of Section 32 of the said Act would not apply.

6. After considering the rival contentions, I am of the opinion that interest of justice will be served if the Rent Case No.5/2000, which is restored by the impugned order, is directed to be disposed of on all issues as expeditiously as possible and in any case within 18 months from today. With such an order, the Rent Controller, will have to decide all the issues that arise in the matter including, the issue as to whether there is a landlord-tenant relationship between the parties and if there indeed is such relationship then, whether, any grounds for eviction have been made out. Rather than decide such issues in piecemeal, interest of justice would be served if all such issues are decided. If ultimately, it is held that there is landlord-tenant relationship then, even the order made under Section 32(4) of the said Act would revive because admittedly, no rents have been deposited by the respondents during the pendency of proceedings before the Rent Controller. No doubt, such rents may not have been deposited based on the plea that they were not tenants of the suit property. However, if it is ultimately held that they are tenants then, obviously, such a plea would no longer hold good. For all

these reasons, I think that interest of justice would be best served if the main eviction proceedings are disposed of expeditiously and the Rent Controller is directed to decide the matter on all such issues, including the issue as to whether there is landlord-tenant relationship.

7. Accordingly, with the above directions, this petition is disposed of. The parties to appear before the Rent Controller/concerned Civil Court that functions as a Rent Controller, on 20.03.2023 at 10.00 a.m. and file an authenticated copy of this order. The Rent Controller/concerned Civil Court to act accordingly.

8. The petition is disposed of in above terms by keeping open all contentions of all parties.

M. S. SONAK, J.

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