

Niti

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

**WRIT PETITION NO.566 OF 2022**

1. MR. ADOLFO GOMES,  
Aged about 82 years, business,  
married, residing at H. No. 140,  
Constancio Roque De Costa Road,  
Margao — Goa (since deceased),  
through his Legal Representatives,

a) MRS. HILDA GOMES,  
Widow of Adolfo Gomes,  
age 85 years, housewife,  
through his power of attorney holder  
Mr Derick Jesus Gomes [1(b)].

b) MR. DERICK JESUS GOMES,  
Son of Adolfo Gomes,  
age 42 years, Married, business,  
Both residents of H. No. 140,  
Casa de Adolfo Gomes,  
Constancio Roque De Costa Road,  
Pajifond, Margao - Goa, 403601.

....Petitioners

***Versus***

1. M/S. PRADEEP BROTHER &  
ENTERPRISES,  
A duly registered Partnership Firm,  
having registered office at Rawanfond,  
H. No. 87, Margao - Goa,  
represented by its Partners,

SHRI PRABHAKAR SHANKAR SINAI  
NADKARNI, Aged about 74 years,  
businessman, married, and

MR. DAMODAR PRABHAKAR  
NADKARNO,  
Son of Prabhakar Nadkarni,  
aged 45 years, businessman,  
Both residents of H. No. 181/J,  
Damodar Niwas, Borda,  
Margao - Goa.

2. MRS. SIONA MARIA GOMES,  
Age 39 years, married, housewife,  
resident of H. No. 140,  
Casa de Adolfo Gomes,  
Constancio Roque De Costa Road,  
Pajifond, Margao - Goa, 403601.

3. MRS. SMITA AURIA RODRIGUES,  
Daughter of Adolfo Gomes,  
age 46 years, married, housewife,  
and her husband,

4. MR. ANDRE GLENNY JESUS  
RODRIGUES,  
Age 51 years, married, service,  
Both residents of Villa Bruno,  
H. No. 279, D'Mello Vaddo,  
Carmona, Salcete - Goa.

5. MRS. SENDRA GOMES,  
Daughter of Adolfo Gomes,  
age 45 years, married, service,  
and her husband,

6. MR. NEIL WILDEN MAZARELLO,  
Age 50 years, married, service,  
Both residents of Pandava Complex,  
Flat No. E2/F1, 1 Floor,  
Opp. Forest Department,  
Aquem, Alto, Margao -Goa.

7. MRS. RITA MARIANA GOMES,  
Daughter of Adolfo Gomes,  
age 43 years, married, housewife,  
and her husband,

8. MR CHRISTOPHER GAVIN  
COUTINHO

Age 49 years, married, service,  
Both residents of Rainbow Valley,  
H.No.779/H, Mugalli Sao Jose  
De Areal, Curtorim, Goa.

....Respondents

**Mr Jatin Ramaiya, Advocate for the Petitioners.**

**Mr C.A. Coutinho with Mr Ivan Santimano, Advocates for  
Respondent Nos.1(a) & 1(b).**

**CORAM: M. S. SONAK, J.**

**DATE : 27<sup>th</sup> APRIL 2023**

**ORAL JUDGMENT :**

1. Heard Mr Jatin Ramaiya for the petitioners and Mr C.A. Coutinho for respondents nos.1(a) and 1(b).
2. Rule. The rule is made returnable immediately, with consent.
3. The challenge in this petition is to the orders dated 19.04.2021 by the Rent Controller (Civil Judge, Junior Division at Margao) and the order dated 26.09.2022 by the revisional authority (District Court, South Goa at Margao) in Rent Revision No.5/2021.

4. By order dated 19.04.2021, the Rent Controller allowed the respondents (tenants) to deposit rent during the pendency of the eviction proceedings. The revisional authority confirmed this order. Hence, the present petition by the landlord.

5. Mr Ramaiya submitted that the summons in the eviction proceedings was served upon the tenants (whose tenancy was already terminated) on 26.09.2018. He refers to the roznama dated 26.09.2018 in which the tenants appeared through an Advocate. Mr Ramaiya then refers to Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969, which provides that an application for deposit of rent must be made within one month from the date on which notice is served on him for the first time about the said proceedings before the Controller.

6. However, Mr Ramaiya submits that application as contemplated by Rule 7 of the said Rules, was made by the tenants only on 26.11.2018. He, therefore, presents that there was at least 30 days delay in making such an application. Based upon this, he submits that such an application for deposit of rent should not have been allowed by the Controller, and the Controller's order dated 19.04.2021 should not have been upheld by the revisional authority by order dated 26.09.2022.

7. Mr Coutinho, the learned Counsel for the tenants, submits that the copy of the eviction petition and documents was served upon the tenants only on 26.10.2018. Therefore, the application was made for the rent deposit within a month from the said date. Accordingly, he submits that two authorities have concurrently allowed the applications, and there is no jurisdictional error warranting interference under Article 227 of the Constitution.

8. Mr Coutinho points out that the point of the application being allegedly time-barred did not arise, and, therefore, the same was not even argued before the Rent Controller or the revisional authority. He, therefore, submits that such a new point should not be allowed to be raised for the first time in this Court.

9. For the above reasons, Mr Coutinho submits that this petition may be dismissed.

10. The rival contentions now fall for determination.

11. The record shows that the point Mr Ramaiya now raises was neither raised before the Rent Controller nor the revisional authority by the petitioner–landlord.

12. Mr Ramaiya, however, pointed out that the revisional authority in paragraph 18 of the impugned order dated 26.09.2022 has touched

upon this point suo motu but ruled against the petitioner for having failed to raise such a point before the Rent Controller. Mr Ramaiya submitted that, in any case, this is a point of law, and there can be no bar to raising such a point for the first time before this Court.

**13.** The point now raised by Mr Ramaiya is not a pure question of law; instead, it is a mixed question of law and fact. The factual aspect of the tenant not being served with a copy of the eviction petition or the documents supporting the eviction petition cannot be adjudicated for the first time in this Court. Therefore, the revisional Court was justified in its observations in paragraph 18 of the impugned order. Even before the revisional Court, no such point was raised by the petitioner–landlord.

**14.** Further, the circumstance that no such point was raised before either the Rent Controller or the revisional authority indicates this point's frivolity. Ultimately, the purpose of requiring the tenant to deposit the rent during the pendency of eviction proceedings or appeals or revisions arising out of the eviction proceedings is to ensure that the landlord secures the rent even though there may be a dispute about termination of the tenancy or such other conflicts. At the same time, such provisions also assist the tenants because, pending the proceedings, the landlords sometimes refuse to accept the rent once the tenancy is terminated or proceedings for eviction are filed.

**15.** Therefore, the provisions regarding the rent deposit contained in beneficial legislation must be construed pragmatically and not pedantically. Likewise, the timeline provided in Rule 7 of the said rules must also be interpreted pragmatically and not pedantically. In the present case, there is some dispute about good service. Such a dispute was not adequately raised before the Rent Controller even though the dispute was on facts.

**16.** Be that as it may, this can hardly be called a case of some tantamount or obstinate tenant. On the contrary, within hardly a month or so from the receipt of the copies of the eviction petition and the documents accompanying the same, applications have been filed to deposit the rent.

**17.** Assuming there is some technical or marginal delay, the same also is within a range of hardly a month or so. The petitioners' main argument was that the tenants were not even entitled to deposit the rent because the petitioners – the landlord had already terminated the tenancy. This defence was frivolous because the petitioners have filed proceedings against the respondents - tenants. So now there is an obstruction to the deposit of the rents on the grounds of alleged delay. The jurisdiction under Article 227 cannot be exercised to assist such a landlord or rather to assist such pleas.

**18.** There is no jurisdictional error or, for that matter, any other error in the current orders made by the Rent Controller and the revisional authority.

**19.** Accordingly, this petition is liable to be dismissed and is hereby dismissed but without any order for costs.

**20.** After this order was dictated, the learned Counsel for the parties submitted that the parties would attempt to resolve their disputes through mediation. Accordingly, Advocate Mario Pinto Almeida is appointed as a Mediator. The parties are to appear in his chamber before the Mediator on 04.05.2023 at 5.30 pm. Mr Almeida is requested to mediate and see if any amicable solution is possible. The report is to be filed before the Rent Controller. The Mediator's fees should be paid by the parties in equal proportions.

**M. S. SONAK, J.**

NITI K  
HALDANKAR

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NITI K HALDANKAR  
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