

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.369/2017

MR. ASHOK JAGANATH
CHODANKAR Businessman, resident
of Betim, Bardez - Goa. (Since deceased)

Through his legal heirs;

1 (a) Smt. Kalandi Ashok Chodankar,
Wife of late Ashok Jaganath Chodankar,
Major of age;

1 (b) Mrs. Sonali Rajesh Valvaikar,
Daughter of Ashok Jaganath Chodankar,
Major of age, married, and her husband;

1 (c) Mr. Rajesh Tulshidas Valvaikar, Son
of Tulshidas Valvaikar, Major of age,
married;

All Indian nationals and resident of H.
No. 436, Laxmi Niwas, Walkeshwar
Wada, Betim, Bardez Goa.

... PETITIONERS

Versus

1. JORGE MARCAL FLORIANO
PINTO REBELLO,

Landlord, since deceased through legal
Representatives

1.a. SMT. MARIA AMELIA REBELLO,
His widow, Major in age, Indian
National, Resident of Miramar, Panjim-
Goa.

1.b. MR. OSCAR FELIPE PINTO REBELLO, Son of Jorge Rebello, 50 years old, married, Indian National, And his wife,

1.c. MRS. VERONICA MARISCA D'SOUZA, 46 years old, Indian National,

Both residents of 34 La Oceana, HSG Colony, Taleigao Pleatues, Dona Paula-Goa.

1.d. MR. KEVIN REBELLO, son of Jorge Rebello, 47 years old, married, Indian National, And his wife,

1.e. MRS. TANVIR SHAIKH HASSAN REBELLO, 47 years old, Indian National,

Both residents of S2, Pinto Arcade, 2nd floor, D.B. Marg, Campal, Panaji-Goa.

1.f. Mr. ASHLEY REBELLO, Son of Jorge Rebello, 44 years old, married, Indian National, And his wife,

1.g. MRS. SABITA PINTO REBELLO, 42 years old, Indian National,

Both residents of D/4, Pearly Shell Building, Miramar, Panaji-Goa.

... RESPONDENTS

Mr Abhijit Gosavi with Ms K. Naik, Advocates *for the Petitioners*.

Mr A. D. Bhohe with Ms A. Fernandes and Ms Ramona Prazeres, Advocates *for the Respondents*.

CORAM: M. S. SONAK, J.

DATED: 4th August 2023

ORAL ORDER:

1. Heard Mr Abhijit Gosavi for the petitioners-tenants and Mr Ashwin Bhobe for the respondents-landlords.

2. The challenge in this petition is to the concurrent judgments and orders made by the Rent Controller and the District Court (Appellate Board) ordering the petitioners' eviction under Section 22(f) of the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 (Rent Control Act). This ground provides that a tenant who has ceased to occupy the tenanted premises for a continuous period of four months without a reasonable cause is liable to be evicted.

3. The respondents/landlords instituted the eviction proceedings against Mrs Jagannath Chodankar and her son Ashok Jagannath Chodankar, the legal representatives of the deceased tenant Jagannath Chodankar. Jagannath Chodankar expired in 1974, and it was the respondents/landlords' case that the legal representatives ceased to occupy the tenanted premises from 1984 or thereabouts. The eviction petition was filed on 04.12.1986.

4. Jagannath Chodankar's widow and son Ashok filed a written statement on 31.03.1987, denying the allegation of non-occupation or non-user of the tenanted premises. They

maintained that the premises were very much occupied and used. Accordingly, they did not even take any defence about the reasonable cause for the alleged non-occupation or non-user of the tenanted premises. This written statement is signed by one Madan Chodankar as constituted attorney for Jagannath's widow and son. Madan verified this written statement.

5. Before the Rent Controller, the landlord examined himself and examined three neighbouring tenants, including one Mr Datta Sakhalkar, a tenant of the immediate adjoining premises. The landlords produced documentary evidence through electricity bills showing minimum consumption because the meter reader could take no readings due to the closure of the tenanted premises. Madan, the duly constituted attorney, stepped into the box but expired before his evidence could conclude. As such, his truncated evidence was discarded. Jagannath's son Ashok deposed in the matter. On behalf of the tenants, one Vinayak Virdikar and one Tulshidas Volvoikar were also examined.

6. Upon evaluating the evidence on record, the Rent Controller ordered eviction by Judgment and Order dated 27.02.2002. The tenants' appeal to the District Court (Appellate Board) was dismissed by Judgment and Order dated 15.02.2016. This petition was instituted on 22.09.2016 to challenge the concurrent orders made by the Rent Controller and the District Court (Appellate Board).

7. The record shows that this petition was not diligently pursued. To begin with, this Court's order dated 03.05.2017, by which the petitioners were granted interim relief, was not complied with. The arrears/compensation amount was not deposited within the prescribed period. This petition was itself allowed to be dismissed for default. Ultimately, the petition was restored subject to a deposit of ₹5 lakhs towards arrears, etc. Even this amount was not deposited within the prescribed period. Extensions were applied, but no amounts were deposited even during the extended period. Finally, the amount was deposited, and this petition was restored.

8. Mr Gosavi, learned counsel for the petitioners, submits that there was no clear evidence about the cessation of occupation for a continuous period of four months, and that too without any reasonable cause. He offers that the tenants' evidence and the evidence of the tenants' witnesses establish that the tenanted premises were in use. Based only on the minimum consumption reflected in the electricity bills, the two Courts could not have concluded that the tenants had ceased to occupy the premises for a continuous period of four months without any reasonable cause.

9. Mr Gosavi then referred to the evidence of Datta Sakhalkar, one of the witnesses examined by the landlords (neighbouring tenant), to submit that reasonable cause for non-occupation could be culled out through this witness's testimony. He referred to the portion where this witness spoke about Madan running the

business of tours and travels from the tenanted premises and how the premises were closed when the said Madan suffered a leg fracture in an accident and had to be shifted to Bombay for treatment. Mr Gosavi submits that based on Mr Sakhalkar's evidence, a case of reasonable cause for non-occupation was made out, and the two Courts committed jurisdictional error in not appreciating this cause.

10. Mr Gosavi pointed out that the evidence on record shows that after one year of the alleged closure, the business was restarted through the tenanted premises. Mr Gosavi submitted that this clearly shows sufficient cause. Mr Gosavi relied on *Dunlop India Limited v/s. A. A. Rahna And Another – (2011) 5 SCC 778* and *Atchut Pandurang Kulkarni v/s. Sadashiv Ganesh Phulambrikar – 1972 ALL MR OnLine 234* in support of his contentions.

11. Mr Bhobe learned counsel for the respondents/landlords, submitted that there were no pleadings of sufficient cause and the two Courts, on a detailed evaluation of oral and documentary evidence, have recorded the findings of fact. He submitted that there is no perversity in the record of such findings, and therefore, this Court ought not to interfere with the concurrent orders made by the two Courts. He pointed out that a patently false defence was raised on behalf of the tenants, which defence the tenants were unable to establish. He submitted that Madan had no rights regarding the suit tenanted premises, and there were admissions in Ashok's deposition about the closure or cessation of occupation

for more than a year. Mr Bhobe submitted that while the initial burden to establish cessation of occupation was on the landlords, the burden to establish reasonable cause was on the tenants. He offered that there were neither any pleadings nor proof regarding sufficient cause. For all these reasons, Mr Bhobe submitted that this petition may be dismissed.

12. The rival contentions now fall for determination.

13. The landlords, in their eviction petition instituted on 04.12.1986, categorically alleged that the tenants, i.e. widow and son of late Jagannath Chodankar, ceased to occupy the tenanted premises (commercial premises admeasuring about 20 sq. mtrs. Near Cone National and Cafe Bhosle) for a continuous period of four months without any reasonable cause. The tenants, through their power of attorney Madan, denied this allegation and claimed that there was no cessation to occupy the tenanted premises. No defence of reasonable cause, even in the alternate, was raised by or on behalf of the tenants.

14. Apart from examining himself, the landlord examined three more natural witnesses, i.e., the neighbouring tenants. All these tenants clearly and cogently deposed that from 1984 to 1985, the tenants ceased to occupy the tenanted premises continuously. Only one of the witnesses, i.e. Datta Sakhalkar deposed that Madan was conducting the travel and tourism business before 1984. For some time, the said Madan was taken for treatment to Bombay due to a fracture he sustained in an accident. Mr Gosavi

submitted that the two Courts should have considered this evidence as sufficient cause for not occupying the tenanted premises.

15. As noted earlier, the tenants' written statement was signed and verified by Madan as their Power of Attorney. No defence was raised in the written statement about the reasonable cause for non-occupation, perhaps because the tenants knew that Madan was not a tenant of the tenanted premises. Any fracture sustained by him could never constitute reasonable cause for tenants' non-occupation of the tenanted premises. The evidence of the two so-called employees allegedly engaged by Madan also inspired no confidence. Their testimony did not even attempt to establish any serious nexus with the tenants. Accordingly, the two Courts refused to accept any case of reasonable cause when the tenants had not bothered to plead any such claim or prove the same by leading any cogent evidence. The approach of the two Courts cannot be faulted.

16. Even Datta Sakhalkar's evidence refers to Madan being taken to Bombay for some time. However, Datta categorically deposes the closure of the tenanted premises for more than a year. Datta's evidence, coupled with the evidence of two other tenants, amply establishes that the tenants had ceased to occupy the tenanted premises for a continuous period of more than four months.

17. Apart from the oral evidence, the documentary evidence in the form of electricity bills was produced and considered by the two Courts. This evidence shows that only minimum consumption was reported because the meter reader could not access the meter inside the tenanted premises because they were closed. Ashok (tenant), in his deposition, stated that he was not in a position to say anything about why minimum charges were levied between December 1984 to July 1986. Ashok (tenant) admitted that the tenanted premises were locked between December 1984 and July 1986. This corroborates the remarks on the electricity bills that the meter readers could not access the meter inside the tenanted premises because the tenanted premises were locked between December 1984 to July 1986.

18. Even the evidence of Virdikar and Volvoikar does not speak about the user by Jagannath's widow or son Ashok. These witnesses refer to Madan. Again, the two Courts have discussed in great detail the evidence of these witnesses and concluded that they were not creditworthy. The documentary evidence, which generally would have been available if these witnesses were indeed Madan's employees, was not produced. Besides, these witnesses did not even claim to be Jagannath's widow or son Ashok's employees.

19. A vague plea about tenancy being created in favour of the Hindu Joint Family of which Jagannath was a Karta was raised in the written statement. However, there was no evidence in support of the vague defence. This was a defence of convenience,

and though the burden was entirely upon the tenants, no evidence was led in support of the same.

20. In *Dunlop India Limited (supra)* relied upon by Mr Gosavi, the Hon'ble Supreme Court has held that the initial burden to show that the tenant has ceased to occupy the building continuously for six months is always on the landlord. He has to adduce tangible evidence to prove that the tenant was not occupying the building continuously for six months. Once such evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of six months. In the present case, the landlords have discharged the burden the law cast upon them. However, the tenants neither pleaded nor proved the burden regarding reasonable cause. Even if the absence of any pleadings is ignored, from the evidence on record, no reasonable cause is spelt out.

21. The decision in *Atchut Pandurang Kulkarni (supra)* is entirely distinguishable. The petitioner-tenant in the case was transferred, but his family continued residing in the tenanted premises. In this context, the learned Single Judge of this Court relied upon the decision rendered by *Chagla, C.J., in Civil Revision Application No.1527 of 1953, decided on 30th July 1954*. The observations in the 1972 or 1954 decisions in no manner assist the petitioners' case, given the oral and documentary evidence on record. Besides, such observations must be construed in the context of the facts proved before the Court.

22. Thus, this is a case where there is overwhelming evidence about the tenants ceasing to occupy the tenanted premises for a continuous period of more than four months without any reasonable cause. The Rent Controller and the District Court (Appellate Board), upon a detailed evaluation of the evidence (both oral and documentary), have recorded the concurrent findings of fact. Such findings suffer from no perversity whatsoever. Such findings are, in fact, overwhelmingly supported by the material on record. The tenants raised a false defence and failed to prove the same. Accordingly, no case is made out to interfere with the impugned and concurrent judgments and orders.

23. The petitioners suffered an eviction decree on 27.02.2002. This decree was confirmed by the District Court (Appellate Board) on 15.02.2016. Despite suffering an eviction decree for the last twenty-one years, the petitioners have deposited only an amount of ₹7 lakhs in this Court even though the tenanted premises are situated in the heart of Panaji city. The tenanted premises are surrounded by several commercial establishments, as is evident from the evidence of three tenants examined by the landlords. The eviction Petition was instituted in 1986, almost 36 years ago.

24. Given the observations in paragraph 7, the tenants seem to have a propensity to delay this case. Therefore, directions are essential to ensure that the tenants do not transfer or part with the possession of the tenanted premises only to frustrate the

orders of eviction. The petitioners are accordingly restrained from doing so. An order must typically be made to allow the Landlords to withdraw the compensation amounts deposited by the Petitioners for a portion of the period.

25. Still, since some financial difficulties were expressed by the tenants at the time of deposit of the arrears of ₹5 lakhs for the restoration of the petition, which was already dismissed for default, the landlords are permitted to withdraw an amount of ₹5 lakhs from out of the amount deposited by the petitioners in this Court by way of compensation. This amount can be withdrawn immediately.

26. Now that the eviction decrees are confirmed, the petitioners-tenants should hand over vacant and peaceful possession of the tenanted premises to the landlords within three months from today. If the vacant and peaceful possession is handed over within three months from today, then the petitioners may withdraw the balance amount of ₹2 lakhs along with interest, if any, that may have accrued thereon from this Court. For this, the necessary application will have to be filed by the petitioners before this Court, along with evidence of handing over of the possession to the landlords. Copy of such application will have to be served on the advocate for the respondents-landlords.

27. However, if the petitioners fail to hand over the possession of the tenanted premises to the landlords within three months, the landlords will have the liberty to withdraw the balance

amount deposited by the petitioners in this Court along with interest, if any, that may have accrued on this amount.

28. The petition is dismissed with the above directions.

29. There shall be no separate order for costs.

30. All concerned can act on the authenticated copy of this order.

M. S. SONAK, J.

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