

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 147 OF 2023.

DHARMENDRA POROB DESSAI

... Petitioner

VS

VASUDEV PEDNEKAR

...Respondent.

Mr. A. D. Bhohe and Ms. S. Shaikh, Advocate for the petitioners.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Rivankar and Ms. Tanvi Parab, Advocate for the respondent.

CORAM: PRAKASH D NAIK, J

DATED: 10th AUGUST 2023

ORAL ORDER:-

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India and challenged the judgment and order dated 29.9.2022 passed by District Judge, South Goa at Margao in Rent Appeal No.6 of 2022 dismissing the appeal and confirming the judgment and order dated 10.5.2022 passed by the learned Civil Judge, Junior Division,

“C” Court Vasco-da-Gama, in Rent Case No.11/2016/C by which the Rent Controller was pleased to allow the application dated 20.10.2016 filed by the respondent under Sections 22(2)(a)(b)(i) and 23(1)(a)(i) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as “Rent Control Act”) whereby the petitioner was directed to vacate the suit shop within stipulated time and handover the possession of the shop to the respondent.

2. The respondent/original applicant instituted the proceedings under Sections 22(2)(a)(b)(i) and 23(1)(a)(i) of the Rent Control Act before the Civil Judge, Junior Division “C” Court at Vasco, viz. Rent Control Case No.11/2016/C.

3. In the aforesaid application the respondent (original Applicant) had contended that he is the owner of the shop having two compartments bearing No.142(3) and 142(6) situated in ward I, Headland, Sada, bearing Land survey no. 28 in Mormugao Taluka, Sub-District of Mormugao, District of Goa. He had leased premises having house nos.142(3) and 12/142(3) to the petitioner (original respondent) by way of deed of lease dated 16.10.1995 executed before the Notary. The shop premises is herein after referred to as “suit shop”. The suit premises was leased out for a period of three years commencing

from 5.10.1995 till 5.10.1998 for the purpose of carrying out the business of running the Medical Stores for a monthly rent of Rs.800/- per month and advance deposit of Rs.30,000/-. The premises bearing no. 142(6) was used by the sister of the respondent who was doing her tailoring business. The petitioner is a doctor by profession and he cannot engage in any other business trade and commerce which is contrary to his professional ethics. Ms. Pratiksha Premanand Dessai was conducting business of Medical Stores under the name of M/s Dharmanand Medical Stores which is evident from the licence issued by the Directorate of Food and Drugs Panaji Goa for carrying out the business. The original respondent had sub-let the suit premises without the consent of the original applicant. The petitioner/original respondent had not paid the rent for more than three months i.e from 1.05.2009 till date. The original respondent was in need of suit shop for his personal use for starting a business and requested the original respondent on several occasions to hand over vacant possession of the suit shop. However, the petitioner failed to hand over the vacant possession of the suit shop to the respondent/original applicant. Vide Letter dated 9.8.2007 it was brought to the notice of the original respondent that the original applicant wants the suit

shop for his personal use for starting a business and to handover the vacant premises of the suit shop to the original applicant. On 25.4.2016 the respondent issued legal notice through his Advocate. The petitioner did not comply the notice. Notice was replied by the respondent vide reply dated 27.4.2016 and 27.5.2016.

4. The petitioner filed his written statement and denied the contentions of the original applicant and denied the claim of respondent.

5. During the pendency of the eviction proceedings, the petitioner filed proceedings under Section 18 of the Rent Control Act on 1.3.2018 seeking indulgence of the Rent Controller to permit the petitioner to deposit the rent, viz Rent Case No. 3/2017/C. Vide order dated 30.1.2020, the learned Civil Judge, Junior Division "C" Court, Vasco Goa granted the application filed by the petitioner under Section 18 of the Rent Control Act and he was allowed to deposit the future rent every month in respect of the suit shop at the rate of Rs.800/- per month without prejudice to the rights that might accrue in favour of the respondent.

6. Respondent filed Affidavit in evidence in Rent Case No.11/2016/C on 15.7.2017. His deposition was recorded on

12.9.2017. He was cross examined on 2.11.2017, 5.3.2019, 11.7.2019. The petitioner filed Affidavit of evidence and his examination in chief was recorded on 22.2.2022.

7. Vide judgment and order dated 10.5.2022, the learned Civil Judge, Junior Division “C” Court, Vasco granted the application under Section 22(2)(a)(b)(i) and 23(1)(a)(i) of the Rent Control Act and original respondent/petitioner was directed to vacate the suit shop within 60 days and to handover the peaceful and vacant possession of the suit shop to the original applicant.

8. Being aggrieved by the judgment and order dated 10.5.2022, the petitioner filed an appeal under Section 45 of the Rent Control Act before the District Court which was registered as Rent Appeal No.6 of 2022. Vide judgment and order dated 29.9.2022 the appellate Court dismissed the Rent Appeal.

9. Learned Advocate Mr. A. D. Bhobe, representing the petitioner submitted as under:

- a. The impugned orders are contrary to law and evidence on record.
- b. The Courts below have not appreciated the evidence and the documents on record in proper

perspective and erroneously passed the impugned orders.

- c. The respondent has not established that the petitioner had refused to pay rent or that the petitioner had sub-let the premises.
- d. The Courts below have committed an error in holding that the petitioner is liable to be evicted from the shop for non-payment of the rent.
- e. The respondent had not proved that the rent in respect of the suit shop were either due or not not paid from 1.5.2009 onwards.
- f. The petitioner had filed an application under Section 18(1) of the Rent Control Act. Vide order dated 30.1.2020, the Rent Controller after arriving at a categorical finding that the petitioner had established that he had taken measures to deposit the rent through various degrees provided under the Rent Control Act and inspite of said measures taken by the petitioner to pay the rent, the respondent had refused to accept the rent and thereby the Rent Controller had allowed the said

application.

- g. Order dated 30.1.2020 had attained finality and that it was not questioned by the respondent.
- h. The conclusion arrived by the Courts below that the petitioner was liable to be evicted for non-payment of rent suffers from illegality in view of the order dated 30.1.2020. Both the Courts below have failed to take note of the said order.
- i. The petitioner had produced sufficient material and justification in the context of rent being due from January 2013 till February 2017.
- j. The respondent has not produced any material to indicate that receipts were issued by the respondent in respect of payment of rent nor has produced any receipts of payment of rent on earlier occasions.
- k. The respondent had not established that the suit shop was sub-let to another person by the petitioner. The sister of the petitioner was holding licence for conducting pharmacy business. It does not amount to sub-letting the premises. That the

respondent had admitted that the pharmacy license was in the name of the brother of the petitioner's father. Pharmacy was operating in the suit shop since 1977. It was conducted by the family members of the petitioner.

1. The Medical store was being run by the sister of the petitioner. It would neither amount to sub-letting the premises nor that could be a ground for eviction. The burden to establish that the premises were sub-let was upon the respondent.

10. Learned Senior Advocate Mr. J. E. Coelho Pereira, for respondent submitted that there are concurrent findings of two Courts that the petitioner is liable to be evicted from the premises. The petitioner had committed default in payment of rent. The petitioner had sub-let the premises. The order dated 30.1.2020 passed in application preferred by the petitioner under Section 18 of the Rent Control Act cannot overturn the findings of both the Courts below. The application for eviction preferred by the respondent was adjudicated and decided subsequent to order dated 30.1.2020. The proceedings under

Section 18 of the Rent Act and Section 22 and 23 of the Rent Control Act are distinct in nature. While adjudicating the issue in the eviction proceedings, the Courts below has taken into consideration the evidence adduced by the respondent, deposition of both sides, documents brought on record and findings were given by the first Court about the default in payment of rent as well as sub-letting of the premises. The findings of the first Court were confirmed by the appellate Court. Both the orders are based on reasons in support of its findings. Compliance of Section 22(a) of the Rent Control Act is mandatory. Lease agreement refers to clause which prohibits sub-letting of the premises. An improper and a frequent exercise of power under Section 227 will be counter-productive and would divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle.

11. Mr. Pereira had relied upon the following decisions

- 1. Celina Coelho Pereira(ms) and others vs. Ulhas Mahabaleshwar Kholkar and others, (2010) 1 SCC 217.***
- 2. Shalini Shyamm Shetty and another vs Rajendra Shankar Patil,***

(2010) 8 SCc 329.

3. *Navelkar Hotels and others vs Shri Anand B. Shirvoikar delivered in Writ Petition No. 415/2021 on 27.7.2022.*

4. *Mr. Otto Jaime Hamilton P. De Souza and anr. Vs Shri Prabhakar Moraskar, delivered in Writ Petition No. 146/2022 on 27.7.2023.*

12. The respondent is the owner of the suit shop and the petitioner is the person to whom the premises were leased out on rental basis. The deed of lease was executed on 16.10.1995 for a period of three years from 5.10.1995 to 5.10.1998. The premises were let out for a monthly rent of Rs.800/- and advance deposit of Rs.30,000/-. The respondent filed an application on 20.10.2016 before the Court of Civil Judge, Junior Division "C" Court at Vasco. Primary grounds for eviction of the petitioner/original respondent urged in the aforesaid application were default in payment of rent and sub-letting the premises. The petitioner filed written statement. It was admitted that his sister Ms. Pratiksha Premanand Dessai is conducting the business of Medical Stores under the name of

M/s Dharmanand Medical Stores but denied that the suit premises were sub-let. It was also contended that the monthly rent was paid till December 2012. Thereafter, the owner did not turn up to collect the rent. He tried to send monthly rent through money order which was not accepted by the owner. It was further contended that the owner was trying to illegally evict the petitioner. Hence, he filed a suit seeking injunction against him. The application for temporary injunction was dismissed by the trial Court. The District Court had granted the temporary injunction and remanded the matter back to the trial court which is pending. The evidence was recorded.

13. The learned Civil Judge, Junior Division, “C” Court at Vasco allowed the eviction application and directed the petitioner to vacate the suit shop within stipulated time. The appeal preferred by the petitioner was dismissed vide judgment and order dated 29.9.2022.

14. Both orders passed by the Courts below are based on appreciation of evidence, analysis of facts and cogent reasons for arriving at findings in support of eviction. The concurrent findings of the Courts below are challenged by the petitioner by invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

15. Section 22 of the Rent Control Act stipulates grounds of eviction. A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied that the tenant is in arrears in payment of rent due by him in respect of the building for a period of three months and has failed to pay or tender such arrears of rent as are legally recoverable from him within thirty days of the receipt of or of the refusal of a registered notice served on him by the landlord for such arrears or that the tenant has without the written consent of the landlord transferred his right under the lease or sub-let the building or any portion thereof etc., the controller shall make an order directing the tenant to put the landlord in possession of the building and if the controller is not satisfied he shall reject the application.

16. Section 23 of the Rent Control Act provides that the landlord may, subject to the provisions of section 24, apply to the Controller for an order directing the tenant to put him in possession of the building.

17. Respondent had testified that the petitioner had not paid the rent for more than three months. He has produced relevant

documents. The petitioner had filed an affidavit of his evidence. He had examined himself. In the cross examination he stated that he is doctor by profession. As per lease deed dated 16.10.1995 the suit shop was given on lease for three years. He was called upon to pay arrears of rent. Legal notice Exh. 14 shows that the original applicant had called upon the original respondent to pay the rent. The trial Court concluded that the petitioner had not paid the rent for more than three months. To prove the issue that the original respondent had sub-let and parted the possession to another person it was contended by the original applicant that Ms. Pratiksha Dessai is conducting the business of Medical Stores. Petitioner has admitted that Medical Stores is conducted in the name and style of M/s Dharmanand Medical Stores. Ms. Pratiksha Dessai is shown as proprietor of the M/s Dharmanand Medical Stores and that she is licence holder. According to him, the business carried out in the suit shop is family business. He admitted that as per lease deed he is not entitled to sub-let or transfer the business to any other person. He admitted that the licence in respect of Directorate of Food and Drugs standing in the name of Ms. Pratiksha Dessai. Licences at Exh.C-44,45,46, 47 issued by the Directorate of Food and Drugs, Administration, Panaji Goa and

pertaining to M/s Dharmanand Medical Stores and the same were issued in the name of Ms. Pratiksha Premanand Dessai. NOC dated 24.7.2000 at Exh. C-48 is given by original respondent to Ms. Pratiksha Dessai to run the Medical Stores in the name of M/s Dharmanand Medical Stores in the suit shop bearing No. 142(3) wherein Petitioner admitted that he had issued the NOC to Ms. Pratiksha Dessai to run the medical stores. The lease deed Exh.10 discloses that original respondent had agreed that the lease of the said shop cannot be sub-let and was not transferable to any other party nor he can transfer his business activity where such party is related to him. On the basis of the evidence on record, the first Court has arrived at a finding that it is in evidence that the original respondent had sub-let the suit shop without the consent of the original applicant and committed breach of provisions of the Rent Control Act.

18. Vide letter dated 9.8.2007 it was brought to the notice of the original respondent that the applicant wants the shop for his personal use for starting business and to handover the premises to him. The original applicant has deposed that he requires the premises for his personal use to start the business. He has produced letter dated 9.8.2007 (Exh.11) wherein it was

mentioned that the original applicant through his wife intends to do wholesale and retail business of the coconut in the premises. The cross examination of the original applicant was not effective to demolish his version on the contrary witness Dr. Dharmendra has admitted that the original applicant had written to him in 2007 that he requires suit premises for his personal occupation. Dr. Dharmendra has admitted that he has three shop premises in Anandi Building situated at headland Sada. The Court of Civil Judge, Junior Division allowed the application for eviction. While adjudicating the appeal preferred by the petitioner the appellate Court has noted findings of the first Court. The appellate Court analysed the evidence adduced before the first Court and vide detail order confirmed the order of eviction.

19. The case of eviction is based on the fact that from 1.5.2009 till December 2012 the rent was not paid by the tenant. Nothing was placed on record to show that rent was paid during these period. By notice at Exh. 14, the tenant was called upon to deposit the rent from 1.5.2009. The appellate Court has observed that subsequent deposit of rent before the Court would not condone the delay in depositing the rent. Statutory right accrued to the applicant cannot be taken away.

20. I do not find any reason to interfere in the findings arrived

by both the Courts below. It has been established that there was default in payment of rent and the premises were sub-let. Order passed by the Court under Section 18 of the Rent Control Act is dated 30.1.2020 and thereafter the trial Court has passed the judgment dated 10.5.2022 which was confirmed by the appellate Court vide judgment and order dated 29.9.2022. The observations made in the order dated 30.1.2020 would not affect the findings of both the Courts below while dealing with the application for eviction preferred by the respondent herein. In fact the order dated 30.1.2020 indicates that the original respondent/petitioner is allowed to deposit future rent every month in respect of the suit shop @ Rs.800/-per month without prejudice to the right that might accrue in favour of the respondent(original applicant).

21. Eviction application was preferred on 20.10.2016 by the respondent. Petitioner filed written statement in the eviction application in 2017. Thereafter the application under Section 18 of the Rent Control Act was preferred by the petitioner which was decided by order dated 30.1.2020.

22. In the case of ***Navelkar Hotels and anr Vs. Shri Anand B. Shirvoikar*** (supra), this Court had referred to decision of the Supreme Court in the case of ***Atma Ram Vs***

Shakuntala Rani, (2005) 7 SCC 211 and E. Palanisamy Vs Palanisamy, (2003) 1 SCC 123 wherein it was observed that in rent control legislation if a tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If he fails to do so he cannot take advantage of the benefit conferred by such provision.

23. In ***Celina Coelho Pereira(ms) and others Vs Ulhas Mahabaleshwar Kholkar and others***(supra) in paragraph 25 it was observed that in order to prove mischief of sub-letting as on the ground for eviction under Rent Control Act, two ingredients have to be established, (1) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (2) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent. Initial burden of proving sub-letting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he continues to hold legal possession in tenancy premises.

24. In ***Shalini Shyam Shetty and another Vs Rajendra Shankar Patil*** (supra), it is observed that Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on the equitable principle. 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. Power under Article 227 may be unfettered but its exercise is a subject to high degree of judicial discipline. The object of superintendence under Article 227, 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 Article 227 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 the High Court.

25. In the light of the observations made herein above on merits of the present petition, no interference is warranted to disturb and set aside the impugned orders passed by the Courts below. Petition is devoid of merit and deserves to be dismissed. Hence the following:-

ORDER

- (i) Writ Petition No. 147 of 2023 is dismissed.
- (ii) The petitioner is granted three months to vacate and handover possession of the suit premises to respondent.

PRAKASH D NAIK, J.