

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.87 OF 2023.**

SARVESH ROHIDAS NAIK SHIRODKAR
AND ANR ... Petitioners.
VS
DEVRAI SAGUN BANDODKAR (DELETED
AS PER ORDER DTD 13/08/2021) (DEC)
THR. HIS LRS. ...Respondents.

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

Mr. B. Lotlikar, Advocate for the respondents.

CORAM: PRAKASH D NAIK, J

DATED: 1st AUGUST 2023

ORAL ORDER:-

1. The petitioners are aggrieved by the order dated 11.11.2022 passed on Exh. 21 on the file of Rent Case No.3/Evic/2016/C rejecting the application dated 13.8.2019 filed by the petitioners.
2. The petitioners instituted eviction proceedings under Section 22(2)(a) The Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, seeking eviction of the respondents in the Court of Civil Judge, Junior Division "C" Court at Ponda, which was registered as Rent Case No. 3/Evic/2016/C.
3. The petitioners contention is that the respondents has failed to pay/deposit rent in respect of suit premises i.e. shop no.3 located in

the building known as “Kamakshi Niwas” situated at Ponda Goa, since January 2013.

4. Four issues were framed in the above case on 3.2.2017. The issue no. 1 is as follows:-

“Whether the Applicants prove that vide Agreement of Leave and Licence dated 11.7.2001 the suit shop was allowed to be occupied by the Respondent for a monthly compensation of Rs.550/- based on the terms and conditions stipulated in the Agreement?”

5. The petitioners filed an application under Order 14 Rule 5 of the CPC for deletion of issue no.1. The application was marked as Exh.21. The petitioners contended that issue no.1 did not arise as the same has been decided by the learned District Judge in case no.23/2006 and the said judgment has attained finality in view of the disposal of the First Appeal No. 294/2008. Pleadings based on which issue was framed is not the subject matter of the proceedings.

6. The application Exh. 21 was rejected by the Civil Judge, Junior Division at Ponda vide order dated 11.11.2022.

7. The learned counsel for the petitioners submitted that the issue no.1 did not arise and no material for consideration in view of the

findings in the Civil Suit No. 23/2006 and order passed in First Appeal No. 294/2008. While disposing of the Suit No. 23/2006 the Court had arrived at a findings that the respondents were tenants in respect of the suit shop. The agreement of leave and licence dated 11.7.2001 was considered in the suit.

8. Learned counsel for the respondents submitted that there is no infirmity in the impugned order, the Court has assigned cogent reasons for rejecting the application preferred by the petitioners.

9. The question which arises for consideration is when the Rent Controller having taken note of the findings of the learned District Judge in Civil Suit No. 23/2006 in the context of status of the respondents in respect of the suit premises being referred as tenants could have rejected the application preferred by the petitioners for deleting issue no.1.

10. The Civil suit no.23/2006 initiated by Shri Devrai Sagun Bandodkar, was partly decreed and disposed of vide order dated 30.9.2008. The First Appeal No. 294/2008 was decided by this Court vide order dated 12.2.2016 and the order dated 30.9.2008 was confirmed. The District Judge has arrived at a finding that respondents were tenants in respect of the suit shop. The agreement of leave and licence dated 11.7.2001 was referred and considered in

the suit. Thus, the status of the respondents was decided and the question of framing issue no.1 on 3.2.2017 in Rent Case No.3/Evic/2016/C did not arise. Although the Court below referred to order passed by the District Court, the application preferred by the petitioners for deleting the issue no.1 was erroneously rejected. The impugned order is therefore required to be set aside. Hence, the following:-

ORDER

- (i) The Writ Petition No. 87 of 2023 is allowed.
- (ii) The impugned order dated 11.11.2022 passed by the learned Civil Judge, Junior Division, Ponda below the application Exh.21 in Rent Case No.3/Evic/2016/C is set aside.
- (iii) The application at Exh. 21 preferred by the petitioners for deleting the issue no.1 framed by the Civil Judge, Junior Division, Ponda, is allowed and thereby the issue no.1 is deleted.

11. Writ Petition stands disposed of accordingly.

PRAKASH D NAIK, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
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