



ENNA

WP 4.2023

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 4 OF 2023

1. Mr. Shaikh Zi - Ul - Huq, alias
Zia - Ul - Huq,
S/o late Mr. Xec Ahmed,
Aged 40 years and his wife,

2. Mrs. Shaikh Mumtaz Bi alias
Mumtaz Bi,
D/o late Mr. Rahim Khan,
Aged 49 years,
Both residing at H.No. E-14,
Ward No. 9, near Church View
Building, Fr. Agnelo Road,
Panaji - Goa.

.... Petitioners.

V/s

1. Ms. Celina Coelho Pereira, Major
of age,
R/o E-21, Fr. Agnelo Road, Panaji,
Goa - 403 001.

2. Xec Ahmed (Since deceased)
Through Legal Representatives,
(a) Mrs. Dilshad Bi and her
husband,
(b) Mr. Mulla Abdul Kadir,

Both major of age and residing at
E-18, near Naga Masjid, Manbe
Military Camp, Ponda - Goa.

(c) Mrs. Najma Bi and her
husband,
(d) Mr. Shaikh Adam,

Both major of age and residing at
H.No. 39, near Kobah Masjid,
Sirvodem, Navelim, Margao,
Goa.

(e) Mrs. Fatima Bi and her
husband

(f) Mr. Salim Mohammad Shaikh,
Both major of age and residing at
H. No. 22/1, Sako-Velim, Priol,
Mardol, Goa.

(g) Mr. Shaikh Mohammed Jalal
and his wife,

(h) Mrs. Zulekhan Bi,
Both major of age and residing at
H.No. 215, Muslim Wada, Bhoma,
Goa.

(i) Miss Farzana Bi Shaikh Ahmed,

Major of age and

Residing at H.No. E-14, Ward No.
9, near Church View Building, Fr.
Agnelo Road, Panaji, Goa and

(j) Mr. Shaikh Fayaz

(now since deceased),
Through his Legal Heir,

(k) Master Shaikh Mazim,

Minor in age through his natural
guardian, Mrs. Nazima Bi,

(l)Mrs. Nazima Bi,

Major of age and residing near
Nun's Hopspital, next to
Municipal Market, Bicholim, Goa.

.... Respondent.

*Mr. Y. N. Nadkarni with Mr. Ressano Hector Noronha,
Mr. Nilay Naik and Ms. Simran Khadilkar, Advocates
for the Petitioners.*

Mr. Subhodh S. Kantak, Senior Advocate with Mr. Somnath Karpe, Ms. Neha Kholkar, Ms. Samiksha Vaigankar, Ms. Siddhi Parodkar, Ms. Saicha Dessai, Mr. Anand Shiroadkar and Mr. Kher Simoes, Advocates *for the Respondents*.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 17th DECEMBER, 2024.

PRONOUNCED ON : 9th MAY, 2025.

JUDGMENT:

1. Heard learned Counsel for the Parties.
2. Rule. Rule made returnable forthwith with the consent of the parties.
3. Aggrieved by judgment and order dated 05.07.2022 passed by the District Judge-I, Panaji in Rent Appeal No. 04/2021 (hereinafter referred to as the “**impugned order**”), dismissing Rent Appeal No. 04/2021, the Petitioners herein have preferred the present Writ Petition, invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, seeking that the impugned judgment be quashed and set aside along with the Order dated 04.04.2018 passed by the Court of Civil Judge Junior Division at Panaji in Rent Case No. 24/2014/D and to

restore the Rent Case No. 24/2014/D to the Court of Civil Judge Junior Division at Panaji.

4. Respondent No. 1 (hereinafter referred to as the “**the Landlady**”) is the owner of the building bearing H.No. E-14, situated at Fr. Agnelo Road, Panaji (hereinafter referred to as the “**suit premises**”). By a Lease Deed dated 01.07.1951, the deceased father of Respondent No. 1, leased the suit premises to Respondent No. 2 (deceased).

5. On 11.07.2005, the Landlady filed a Rent Eviction Application bearing No. 11 of 2005 under Section 22 of the Goa, Daman and Diu (Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as the “**the Rent Act**”) before the Rent Controller, North Goa at Panaji, seeking an order directing Respondent No. 2 (hereinafter referred to as the “**original tenant**”, who is since deceased) to hand over the vacant possession of the suit premises to the Landlady on the grounds that the said Respondent had carried out structural changes and/or alterations to the suit premises by constructing an attic room without seeking prior permission or consent of the landlady and without seeking the requisite permission from the Corporation of City of Panaji to undertake the said alterations; the landlady averred that the structural changes impaired the material value and utility of the suit premises.

6. On being served with a notice of the eviction application, the original tenant filed his written statement on 03.10.2005 resisting the eviction and denying the grounds of eviction. Almost

two years after filing the written statement, the original tenant, on 12.09.2007, filed an Application under Section 18 of the Rent Act before the Rent Controller seeking permission to deposit the monthly rent due and further rent before the Rent Controller, citing refusal on the part of the Landlady, from April, 2007 onwards, to accept the rent for the suit premises. This application came to be withdrawn on 29.10.2010, seeking leave to file the same as a separate application, independent of the proceedings in Rent Eviction Application No. 11/2005.

7. A fresh application bearing No. Rent/ADC/61/2010 came to be filed under Section 18 of the Rent Act on 17.12.2010 before the Additional Rent Controller for depositing the accumulated rent amount from April 2007 to November 2010. In a reply/written statement dated 26.02.2011 filed by the Landlady opposing this application, the Landlady contended that the tenant had sent rents for the months of April, 2007 to September, 2007 by money order, and despite the eviction proceedings having been instituted on 11.07.2005 and pending, no rents were tendered from October, 2007 till January, 2011. The landlady contended that since there was delay of payment of rent from the month of October, 2007, she had refused to receive the rents tendered thereafter, in view of the requirement for depositing all arrears of rents in compliance with the provisions of Section 32 of the Rent Act. This application under Section 18 of the Rent Act, on being transferred to the Court of the Civil Judge Junior Division came to be registered as Rent Case/126/2014; this application came to be dismissed for default on 18.11.2016, due to the Advocate for

the original tenant making a statement that she had no instructions from the Applicant.

8. In the meanwhile, on 26.02.2011, an Application under Section 32(4) of the Rent Act was filed by the Landlady in the Eviction proceedings, contending that the original tenant had not deposited rent from month to month, due from October,2007 till January,2011 (3 years and 4 months) seeking a direction to stop the proceedings and direct the original tenant to hand over vacant possession of the suit premises to the Landlady. No reply was filed by the original tenant for almost a year; his reply dated 04.01.2012 contended that he had filed a separate application under Section 18 of the Rent Act on 17.12.2012, which was pending hearing. He further contended in reply that until the application under Section 18 of the Rent Act was disposed, the Rent Controller would have no jurisdiction to decide the application for eviction under Section 32 of the Rent Act. Apart from mere denials, the reply does not state any reason why the original tenant has not deposited rents for month to month or tendered deposit of the same in the Eviction proceedings itself from October, 2007 to January, 2011. The tenant also did not tender the deposit of rents from April, 2007 to September, 2007 or rents for the subsequent periods, along with the reply to the application. The original tenant passed away on 11.08.2012, and on his demise the present Petitioners and Respondent Nos.2a to 2l were brought on record as his legal representatives. Petitioner No.1 is the son of the original tenant while Petitioner No.2 is the wife of Petitioner No. 1.

9. Pursuant to a Gazette notification dated 27.06.2013, directing the rent cases to be transferred to Civil Courts, the Eviction Case No. Rent/ADC/11/2005 filed by the Landlady was transferred to the Court of Civil Judge Junior Division, Panaji and re-numbered as Rent Case No. 24/2014/D. Likewise, the application filed by the Petitioners for deposit of rent for the duration from April 2007 to May 2016 with a demand draft of Rs.550/- was also transferred.

10. On 18.06.2016, the Petitioners filed an application under section 31(1) of the Rent Act in Rent Case No.24/2014/D, seeking permission to deposit the rents from April, 2007 to May, 2016, contending therein that the landlady had refused to receive rents from April, 2007 onwards. A cheque for the arrears of rent was tendered along with the application.

11. Vide order dated 04.04.2018, the Civil Judge (Rent Controller) allowed the application under Section 32(4) of the Rent Act dated 26.02.2011, and directed that the Landlady be put in possession of the suit premises. The Petitioners' application for deposit of rent under Section 32(1) of the Rent Act dated 18.06.2016 came to be dismissed.

12. An appeal was preferred by the Petitioners against the order of eviction dated 04.04.2018 before the District Court (Rent Appeal No.4/2021) on 23.05.2018 along with an application for condonation of delay, which was granted on 07.09.2021. The Rent Appeal came to be registered on 25.10.2021. No application

for deposit of the arrears of rents from October, 2007 till the day of filing the appeal was filed along with the memo of appeal.

However, in the present petition, the Petitioners have pleaded that they had prepared an application to deposit of all arrears of rent and had the same registered along with the memo of appeal, though the same was not filed along with the memo of appeal since the application for condonation of delay in filing the appeal was pending hearing. The copy of the application for deposit of rent purportedly under Section 32(1) of the Rent Act has been annexed to this petition as Exhibit-Q.

13. A subsequent application dated 07.04.2022 was filed by the Petitioners before the District Court (Rent Appellate Tribunal) for depositing the rent due from April, 2007 to March, 2022 amounting to Rs.900/- (Rupees Nine Hundred Only). The application was contested by the Landlady, who filed a Reply dated 21.04.2022 contending that the Petitioners have chosen not to deposit arrears of rent of 11 years before the Court and committed further default from May, 2018 till April, 2022 by not depositing any rents before the Appellate Court. The Landlady contended that there was no compliance with the provisions of Section 32(4) of the Rent Act even in appeal, for which reasons she claimed a fresh order to stop the Appellate proceedings and put her in possession of the suit premises, be passed by the District Court. On the same day, the Landlady filed an application in the Rent Appeal, seeking an order to stop the proceedings and a direction for the Petitioners to hand over the vacant possession

of the suit premises to the her. This application was contested by the Petitioners by filing a reply dated 05.05.2022.

14. The Appeal was dismissed vide judgment and order dated 05.07.2022, rejecting the Application of the Petitioners under Section 32(1) of the Rent Act (at Exhibit 12) whilst granting the application of the Landlady under Section 32(4) of the Rent Act (at Exhibit 15), directing the Petitioners to hand over the vacant and peaceful possession of the suit premises to Respondent No. 1.

15. The orders of eviction dated 04.04.2018 of the Civil Court acting as Rent Controller and order of eviction dated 05.07.2022 of the District Court acting as Rent Appellate Tribunal, both exercising powers under sub-section 4 of Section 32 of the Rent Act have been impugned in this petition.

16. Shri Yogesh V. Nadkarni, learned Counsel appearing for the Petitioners has advanced the following submissions:

- (a) That the default in depositing the rents from April, 2007 till the order of eviction dated 04.04.2018 before the Rent Controller was unintentional and premised upon the legal advice given to the original tenant/Petitioners at the relevant time. He submits that the bonafides and willingness to deposit the rent before the Rent Controller was clear from the fact that an application for this purpose was moved under Section 18 of the Rent Act on 12.09.2007, since the Landlady had refused to accept rent in April, 2007, which was tendered though money order for the months of April, 2007 to July, 2007. He

submits that though the application was styled as an application under Section 18 of the Rent Act, it was clearly an application to deposit the arrears of rent and ought to have been treated as an application under Section 32(1) of the Rent Act. He further submits that the Petitioners/Original tenant, bonafidely believing the legal advice given to them at the relevant time, withdrew the application dated 12.09.2007 (styled as one under Section 18) on 29.10.2010 and filed a separate application on 17.12.2010, under Section 18 of the Rent Act as a separate proceeding.

- (b) The learned Advocate then contends that though the second application filed under Section 18 of the Rent Act came to be dismissed by default on 18.11.2016, clearly, the Petitioners were agitating the deposit of rent for the period from April, 2007 to April, 2016 before a forum, that they were advised, had the jurisdiction to pass necessary orders to effect deposit.
- (c) The learned Counsel has taken me through the provisions of Section 32 of the Rent Act and through Rule 5 and Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (hereinafter referred to as the “**Rent Rules**”), which provide for the procedure to be followed in depositing rent, either when an Eviction proceeding is pending or when there is refusal to accept rent by the landlord. He submits that under the Scheme of the Rent Act, read

with the Rule 5 and 7 framed thereunder, there is no prohibition for tendering deposit of the rent, during the pendency of the proceeding, where the landlord refuses to accept rent, even by moving an application under Section 18 of the Rent Act. It is his contention that deposit of rent, in compliance of the mandate of Section 32 could be also achieved through an independent application under Section 18 of the Rent Act.

- (d) It was then contended that merely because the Rent Controller did not pass any orders on the first application filed under Section 18 in the Eviction proceedings, or for that matter even in the second application under Section 18, filed independently, would not give cause for eviction of the Petitioners under Section 32 of the Rent Act. He contends that the Rent Act being a beneficial legislation, meant to protect the possession of a premises with the tenant, he should not be made to suffer an eviction, for non-deposit because the Court took several years to pass an order directing deposit or it took time, in the appeal, to pass orders on the application for condonation of delay.
- (e) Referring to the second application filed by the Landlady under Section 32(4) of the Rent Act before the Appellate Court, seeking stoppage of the Appellate proceedings, the learned Counsel submits even at this stage, the bonafides of the tenant were demonstrated by production in this petition, of the application to deposit

rent under Section 32(1) of the Rent Act, which was sworn and stamped on the same date that the appeal memo was presented along with an application for condonation of delay. He contends that the application for deposit of rent was even accompanied by a Demand Draft for entire arrears of rent but, however, was not presented along with the memo of appeal, since the memo of appeal could not be registered until delay in filing the appeal was condoned. He has taken me through the copy of the application for deposit of rent, and the subsequent application dated 07.04.2022 for deposit of rent in the Appellate Court, to contend that the Petitioner had throughout shown bonafides in attempting to pay rent during pendency of all these proceedings.

- (f) Reliance was placed on the following case laws by the Petitioners:
- (i) ***Agnelo Cassiano Das Neves e Souza v/s. Adeliaide Balandia Eufemia Ribeiro & Ors.***, Writ Petition 96 of 1983, High Court of Bombay at Goa.
 - (ii) ***Roque A. Ribeiro v/s. Agnelo C. Eves E Souza & Ors.***, 1989 (2) G.L.T. 313.
 - (iii) ***Damayantiben S. Chauhan v/s. Dinesh Parekh & Ors.***, 1988(1) RCJ 520.
 - (iv) ***Joao X Pinto v/s. Oswald J. C. Velho & Ors.***, 1990 (1) G.L.T. 116.

- (v) ***Satyavijay Tandel v/s. Administrative Tribunal***, 1990 (2) G.L.T. 323
- (vi) ***Shamsnder Talkar v/s. Rent Controller***, 1995 (1) G.L.T. 117.
- (vii) ***Shri. Mariano Silveira v/s. Antonio Silveira***, 1995 (1) BOM.C.R. 487.
- (viii) ***Datta Ghadi v/s. Guilhermina Silveira***, 2000 (1) G.L.T. 39.
- (ix) ***Dinanath Rama Naik v/s. Prabha Rane***, 2012 6) ALL MR 758.
- (x) ***Smt. Kanchan Ramdas Morascar v/s. Dr. Armando Joao Benedito Mascarehnas***, 2013 (2) G.L.R. 630.
- (xi) ***Shri Joel Avelino Nornha v/s. Shri Francisco Xavier Estanislau Miranda***, 2016 (1) G.L.T. 277.
- (xii) ***Baboo Gadekar v/s. Jivottam Krishna Naik***, 2016 (4) B.C.R. 835.
- (xiii) ***Cognizance for extension of limitation, In re***, (2022) 3 SCC 117.
- (xiv) ***Otto Jaime Hamilton P. De Souza & Anr. v/s. Prabhakar Moraskar***, 2023 SCC OnLine Bom 1542.
- (xv) ***Manik Lal Majumdar & Ors. v/s. Gouranga Chandra Dey Ors.***, (2005) 2 SCC 400.
- (xvi) ***Arun Kumar Aggarwal v/s. State of Madhya Pradesh Ors.***, (2014) 13 SCC 707.

- (xvii) ***Career Institute Educational Society v/s. Om Shree Thakurji Educational Society***, 2023 SCC OnLine SC 586.
- (xviii) ***Property Owners Association & Ors. v. State of Maharashtra & Ors.***, 2024 SCC OnLine SC 3122.

17. In reply to the submissions of the Petitioner, Shri Subodh Kantak, learned Senior Advocate for the Respondent No.1 (the Landlady) has advanced the following submissions:

- (a) He submits that sub-section 1 of Section 32 casts an embargo on a tenant against whom an Eviction proceeding is instituted, to contest such proceedings, whether before the Rent Controller or in appeal, unless he has paid to the landlord or deposits with the Controller or Appellate Authority all arrears of rent, and continues to pay or deposit such rent during the pendency of the proceeding. He further submits that in terms of sub-section 4 of Section 32 of the Rent Act, failure to pay the rent or to deposit it before the Rent Controller or Appellate Forum would render the tenant open to proceedings being stopped and he being directed to put the landlord in possession of the premises, unless he shows sufficient cause to the contrary. It is the learned Senior Counsel's submission that sub-section 1 provides for only one method of deposit and that is before the Controller, before whom the Eviction

proceedings are pending or before the Appellate Authority before whom the appeal is pending. The provisions of sub-section 1 do not admit of any other Forum or Authority before whom such deposit of rent, during pendency of a proceeding can be done. According to the Counsel, Section 18 of the Act has no application to a situation where an Eviction proceeding is pending, and in such a case the only Forum under the Rent Act in which deposit is contemplated, is the very Forum before whom the proceeding is pending.

- (b) He further submits that the provisions of Section 18 of the Rent Act which provides for deposit of rent, in case a landlord refuses to accept rent, would not apply at all, once Eviction proceedings commence. He submits that on commencement of an Eviction proceeding, it is only the provision of Section 32 which would apply, as sub-section 1 of Section 32 bars the contest by a tenant, of a proceeding, if he does not deposit all arrears of rent till the filing of the proceeding and continues to deposit, from month to month in accordance with Rule 7 r/w. sub-Rule 2 of Rule 5 of the Rent Rules, the rent from month to month. He submits that every default in deposit for each month for which rent is due, would attract the provisions of sub-section 4 of Section 32. He contends that once an application under sub-section 1 of Section 32 is filed, it would be in substantial compliance

with the provisions, notwithstanding that no orders are passed on the application.

- (c) It was further submitted by the learned Senior Advocate appearing for the Landlady that the grounds for eviction were for carrying out structural changes to the premises and not for non-payment of rent. He contends that there was no question, in these circumstances, to even file an independently application under Section 18 of the Rent Act, as was done by the tenant. He has taken me through the provisions of Section 18, 19 and 32 of the Rent Act, to submit that the time limit for deposit under Section 18 of the Rent Act is specified in Section 19, and the consequence of such non-deposit in terms of the time lines specified in Section 19 is quite different from the consequence of non-deposit within the stipulated period prescribed under sub-section 1 of Section 32 r/w. sub-section 4 thereof. Non-deposit in terms of Section 32, during pendency of the proceeding, if the tenant does not show sufficient cause, entails stoppage of the proceedings and a direction to put the landlord in possession of the premises.
- (d) The learned Senior Counsel contends that the conduct of the tenant throughout has been of a dilatory nature and with a view to delay the entire proceeding by filing the three applications under Section 18. He submits that the first application in 2007 under Section 18 was delayed for a year, if one goes by the mandate of sub-section 1 of

Section 32; that application was withdrawn in 2010 and a fresh application was filed as an independent application under Section 18, which had no application to the case. While this application was pending yet another application was made in the year 2016 in the proceedings itself, this time under Section 32 (1) attempting to deposit arrears right from April, 2007 to May, 2016 without any justification or showing sufficient cause for such delay. He points out that the second application filed independently was dismissed for default.

It is further contended that even the third application filed under Section 32(1) in the year 2016 did not contain any statement as to why the payments were being tendered so late nor is there any supporting affidavit of the tenant, the application having been merely signed by the Advocate.

- (e) The learned Senior Counsel then submitted that even when presenting the appeal, no application under Section 32(1) to deposit the entire arrears of rent due from April, 2007 till May, 2016 was moved simultaneously with the appeal. He submits that deposit of all arrears of rent are a pre-condition for preferring an appeal. Reliance was placed on ***Dinanath Rama Naik*** (supra) to contend that a Full Bench of this Court has held that Rule 7 of the Rules would apply to cases where an appeal is filed and Section 32 lays clear prohibition

against the tenant to prefer an appeal or revision, unless he has paid to the landlord or deposited with the Authority all arrears of rent in the time prescribed by the Rule 7. The learned Counsel contends that the appeal itself was not maintainable, though the District Court may have entertained it and for reasons of further non-deposit during the pendency of the appeal, granted the Landlady's application under Section 32(4) filed in the appeal.

- (f) The learned Senior Counsel has then taken me through the order of eviction passed by the Rent Controller and the order of the Appellate Tribunal, to contend that the findings rendered therein are based on the correct appreciation of the record. He contends that the case law cited before the Rent Controller and the Appellate Court has been considered and the principles contained therein have been applied correctly to the case at hand. He submits that no case has been made out for interference with the impugned orders in supervisory jurisdiction of this Court under Article 227 of the Constitution of India.
- (g) Reliance was placed on the following case laws by the Respondents:
 - (i) ***Shri Joao Xavier Pinto v/s. Shri Oswald J. C. Velho & Ors.***, 1986 SCC OnLine Bom 247.

- (ii) ***Debashish Paul & Anr. v/s. Amal Boral***, (2024) 2 SCC 169.
- (iii) ***Girish Gangadhar Agrawal v/s. Jiteshkumar Hasmukhavakhariya***, 2009 SCC OnLine Bom 1271.
- (iv) ***Atma Ram v/s. Shakuntala Rani***, (2005) 7 SCC 211.
- (v) ***Balwant Singh v/s. Ananda Kumar Sharma***, (2003) 3 SCC 433.
- (vi) ***E. Palanisamy v. Palanisamy (Dead) by LRs. & Ors.***, (2003) 1 SCC 123.
- (vii) ***Chandrakant Govind Naik v/s. Sugenia Dias e Souza & Ors.***, AIR 1982 GDD 13.
- (viii) ***Noor Mohammed v/s. Khurram Pasha***, (2022) 9 SCC 23.
- (ix) ***Celina Coelho Pereira (Ms) & Ors. v/s. Ulhas Mahabaleshwar Kholkar & Ors.***, (2010) 1 SCC 217.
- (x) ***M/s Siddamsetty Infra Projects Pvt. Ltd. v/s. Katta Sujatha Reddy & Ors.***, (2024) SCC OnLine SC 3609.

18. In rejoinder, Shri Yogesh Nadkarni, learned Counsel for the tenant has submitted that under Section 32(4) of the Rent Act there is no mandate of pre-deposit on presenting an appeal. He

submits that the words “prefer” an appeal in sub-section 1 thereof, does not imply that an appeal is not maintainable without a pre-deposit. He has taken me through **Manik Lal** (supra) to contend that a tenant should not be made to suffer for non-deposit only because the Court took two years to decide the application for condonation of delay in filing the appeal.

He further submits that that this case is covered by the Judgment of this Court in **Otto Souza** (supra) and further confirms that the observations of the Full Bench in paragraph 11 of **Dinanath Naik** (supra) are only *obiter dicta* and are not binding precedent, as these observations are not in answer to the reference made to the Larger Bench.

19. The main question that arises for decision in this petition, is whether the conduct of the tenant throughout the Eviction proceeding and appeal would attract eviction in terms of the provisions of sub-section 4 of the Section 32 of the Rent Act. One would therefore have to consider the various provisions of the Rent Act and the case law cited by the Counsel for a clearer understanding of these provisions.

20. Section 22 of the Rent Act provides for the grounds for eviction. Clause (a) of sub-Section 2 thereof provides for the ground of eviction for non-payment of rent, for failure to pay rent for a total period of three months and failure to pay or tender arrears of rent, within 30 days of receipt of a registered notice. Under clause (b), the tenant may be evicted if he transfers his right or has used the premises for a purpose other than the one

permitted by the contract. Clause (c) provides that the tenant may be evicted for committing such acts of damage to the premises that are likely to impair materially its value or its utility. Clause (d) provides for eviction of a tenant guilty of acts and conduct which are a nuisance to occupiers of the building or buildings in a neighbourhood. In the present case, the eviction application is instituted on the basis of grounds contained in clause (c) of sub-section 2 of Section 22, alleging that the tenant had made structural changes and alterations to the suit premise, including by erecting an attic floor to the said premises.

21. Section 32 of the Rent Act provides for how payment or deposit of rent are to be effected during pendency of a proceeding for eviction, and provides for the consequence for default in payment or deposit of rent during pendency of the proceedings. Section 32 reads as under:

32. Payment or deposit of rent during pendency of proceedings for eviction. —

(1) No tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all arrears of rent in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate or revisional authority.

(2) The deposit of rent under sub-section (1) shall be made within such time and in such manner as may be prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate or revisional authority, as the case may be, shall, on application made either by the tenant or by the landlord, and after making such inquiry as he deems necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate or revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subjected to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf.

22. The manner of making a deposit of rent under Section 32 and the time limit within which the rent is to be deposited are required be done in terms of Rule 7 of the Rent Rules which reads as under:

7. Time within which and the manner of making a deposit of rent under Section 32.

(1) A tenant against whom proceeding for eviction has been instituted by a landlord under the Act, shall deposit all arrears of rent due in respect of the building within one month from the date on which notice is served on him for the first time about the said

proceedings before the Controller "[or] the appeal or the revisional proceedings before the appellate or the revisional authority, as the case may be.

(2) The tenant referred to in sub-rule (1) shall deposit the rent which may subsequently become due in respect of the building within fifteen days from the date on which such rent became payable by him.

(3) The provision contained in sub-rules (1) to (3) of Rule 5 shall mutatis mutandis apply to deposits made under this rule.

23. The manner in which the deposit under sub-Section 1 of Section 32 r/w. Rule 7 is to be done is specified in sub-Rules 1 to 3 of Rule 5 which read as under:

5. The manner of depositing rent under Section 18(1) and sending copy of the application under section 18(3).-

(1) A tenant, who desires, to deposit rent under sub-section (1) of section 18 shall either personally or through an authorised agent make an application to the Controller in writing.

(2) On the application made under sub-rule (1), the Controller shall pass an order directing the Treasury Office specified in the order to accept the deposit of the rent. He shall also countersign the challan form in triplicate

(3) The tenant shall thereafter deposit the rent in the Treasury Office as directed by the Controller.

24. Read together, Section 32 and Rule 7 would mandate the following:

- (a) That in all Eviction proceedings, the tenant shall not be permitted to contest such proceedings before the Rent Controller unless he has paid or deposited with the Rent Controller all arrears of rent up to the date of payment or deposit.
- (b) The requirement to deposit all arrears of rent up to the date of payment or deposit would equally apply to pending appeals or revision applications. Obviously, if the appeal or revision were filed by the landlord, the provision would only mandate deposit by the tenant before the Appellate or Revisional Authority for arrears due. It would also contemplate tendering the deposit of all arrears due along with a memo of appeal or revision, if such appeal or revision is at the behest of the tenant, since the words deployed in sub-section 1 of Section 32 are “**prefer** an appeal or revision under this Act, **unless** he has paid or **deposited with** the Appellate or Revisional Authority”.
- (c) Sub-Section 1 also mandates that in addition to deposit of arrears of rent as a pre-condition to contest the Eviction proceedings or prefer an appeal or revision, or contest an appeal or revision, rents due shall be paid or deposited from month to month within the time specified in Rule 7 and in the manner specified in Rule 5.

- (d) All arrears of rent are to be deposited under an application in writing made to the Collector under Rule 5 which contemplates passing of an order thereon only to direct the “Treasury Office” specified in the order to accept the deposit and to issue the necessary challan form to effect the deposit. This procedure would apply even for deposits from month to month while all the aforementioned proceedings are pending. There is no prohibition for such application to be a composite one for deposit of arrears and for effecting further payments from month to month, under one order thereon which may be passed by the Rent Controller giving directions to its Treasury/ Nazir/Account’s Section to accept such deposit and to continue to accept the same from month to month.
- (e) The time limit for deposit of arrears of rent due shall be within one month from the date from which the notice is served on the tenant of the Eviction proceedings or appeal or revision. The subsequent rents which become due from month to month are required to be deposited within 15 days from the date on which the rent becomes payable; in the present case the rent was payable by the 5th of the month hence the rent was due and payable or had to be deposited before the Rent Controller by the 20th of every month for which it was due.
- (f) In case there is a dispute as to the quantum of rent to be paid or deposited, an application to decide to quantum

to be deposited is required to be made by the tenant or landlord, on which an order is contemplated of the Rent Controller, after a summary enquiry, to determine such quantum. In the present case, there was no dispute that the quantum of rent was Rs.5/- per month.

25. The consequence of non-deposit of rent in the manner stated above, and when there is default in payment or deposit from month to month, is prescribed in sub-Section 4 of Section 32 of the Rent Act. The provision contemplates the following:

- (a) There is no application by a landlord contemplated under this provision, for seeking to stop further proceedings and for an order directing the tenant to put the landlord in possession of the building.
- (b) Every month of default in depositing the rent due in terms of sub-section 1, would constitute a cause for the Rent Controller to stop the proceedings and pass orders of eviction; so also default in the initial deposit of all arrears of rent up till the date of service of notice of the Eviction proceedings of the tenant, would also entail stoppage of proceedings followed by an eviction order. Both these defaults would constitute a cause for eviction.
- (c) No separate notice is required by the Rent Controller under sub-Section 4, calling upon the tenant to show cause, since the burden is on the tenant to show sufficient cause to the contrary, when it is pointed out to him that he has failed to deposit the rent or the arrears

of rent as contemplated under sub-Section 1. The powers to be exercised under sub-section 4 of stopping proceedings are vested in the Rent Controller, which are not dependent on a landlord filing an application seeking to invoke sub-Section 4 of Section 32.

26. In this context, I may quote the judgment rendered by the Goa, Daman and Diu Judicial Commissioner's Court in ***Leelali Javerbhai Mavany v/s. Smt. Maria Bemvinda da Costa and others***, AIR 1973 GDD 4, which has dealt with the very same question and held that the powers vested under sub-section 4 of Section 32 are to be exercised by the Rent Controller *suo motu* and are not dependent upon an application being filed to that effect. The relevant parts of the judgment are quoted below:

“4. It is contended by the petitioner that the third respondent had no jurisdiction to act suo motu and require the petitioner to satisfy the third respondent that he had within the prescribed time, paid or deposited the rent in respect of the suit premises as required by Section 32 of the Act. According to Shri Kakodkar there is an implied bar on the Tribunal exercising the power to issue the notice suo motu. Now, sub-rules (1) and (2) cast a duty upon the defendant to deposit all the arrears of rent due to at the time of the institution of the proceedings well as those which accrue later. That duty, Shri Pinto de Menezes, learned Advocate for the first two respondents, argues, arose in the present case from the time the petitioner received the notice of appeal. Such duty is also evident from Section 32 sub-rules (1), (2), (3) and (4).

The petitioner failed to deposit the rent within 30 days from the date on which he received the notice of the

appeal. The duty of the petitioner to deposit the rent does not arise from any application made for that purpose by the first two respondents, or from any order passed by the third respondent. The failure of the petitioner to deposit the rent imposes on him a legal restraint to adduce any defence.

Shri Pinto de Menezes relies on Mohd. Khaja v. Bisamillah Begum, AIR 1970 AP 276. That case involved the interpretation of Section 22 of the Andhra Pradesh Rent Act, which corresponds to Section 10 of our Act. In that case, the petitioner deposited with the Controller an amount which according to him was the standard rent, and not the contractual rent, nor did he make any application for the fixation of fair rent. No such application could be made because the Controller did not have the Dower to fix the standard rent. Under our Act also no such power is given to the Controller. It was held that the excess paid by way of contractual rent by the tenant of his own accord could not be deducted and adjusted against the payment of rent, and that the tender of what the tenant thought was standard rent, being a bad tender, did not compel the landlord to accept it.

Besides, as rightly pointed out by Shri Pinto Menezes, even if refund can be claimed such refund can be claimed only for six months prior to the date on which the claim for refund is made, in view of the provisions of Section 19, Proviso 2 of the Act. Shri Pinto Menezes brought to my attention the provisions of Section 20 of the Bombay Rent Act which correspond to Section 16 of our Act and the decisions passed by the Supreme Court in Naresh v. State of Maharashtra, MANU/SC/0044/1966: AIR 1967 SC at p. 37. Union of India v. Jagjit Singh, MANU/SC/0437/1969 AIR 1970 SC 122 and Union of India v. Jal Rustomji Modi, MANU/SC/0530/1970: AIR 1970 SC 1490. In these decisions, it was laid down that the

tenant can make an application for fixation of rent within six months from the date the proceedings are instituted against him.

5. I entirely agree with Shri Pinto Menezes. The question of the bar against adducing defence, imposed by Section 32(4) is a question of law. Besides, it cannot be said that the Administrative Tribunal had adopted a partisan attitude by issuing the notice in question, of its own accord.

.....

8. The fact as to whether Rule 7 applies to a case under Section 22(2)(a) is immaterial because in the present case recovery of possession is sought under Section 32(4) of the Act. The remedy under Section 32 is a remedy given to the landlord in addition to the ground of eviction given by Section 22(1)(a)."

Sub-Section 4 of Section 32 vests the power in the Rent Controller, on his own motion to stop proceedings before him, in which case, it is for the tenant to show sufficient cause for non-deposit of arrears or non-deposit of subsequent rents from month to month. Where such cause is not shown by the tenant, the Rent Controller would be empowered to direct the tenant to hand over vacant possession of the premises to the landlord.

27. In certain cases, as in the present one, the tenant may raise a plea that his application under Section 18 was pending, seeking deposit of rent. He may claim that this is a circumstance to be considered by passing orders under sub-section 4 of section 32 to show sufficient cause for not stopping the proceedings. This

position was also considered in **Otto Souza** (supra) at paragraph Nos. 8, 9, 14 and 16, which read as under:

“8. The Appeal Court missed that Section 32(4) does not contemplate an automatic eviction order no soon-er it is established that the tenant has failed to pay or deposit the rent within 30 days from the date of institution of the proceedings. Further, the proceedings can be stopped, and eviction can be ordered only when the tenant fails to show sufficient cause why further proceedings should not be stopped and an eviction ordered. This aspect of the matter and the settled law on the subject was not considered by the Appeal Court, which proceeded on the basis that once there is a default in the rent deposit within 30 days, the proceedings must stop, and the eviction must follow.

9. Section 32(4) may not refer to the service of formal show cause notice upon a tenant who may have defaulted in depositing the rent within 30 days. However, Section 32(4) clearly contemplates that an opportunity must be granted to the tenant not simply to explain why there was a failure to deposit rent within 30 days but why despite such failure, no order for stoppage of proceedings and his eviction should be made.

....

14. Since the Appeal Court has not followed the above position in law, the impugned order dated 06.01.2022 stopping further proceedings and ordering the tenant's eviction warrants interference.

....

16. The application under Section 18 and a determination under 32 (4) are independent proceedings or issues. But consideration of such Issues presupposes an independent

address to the parameters of the two pro-visions. In a given case, the pendency of an application under Section 18 or even the merits of such an application may constitute sufficient cause not to stop further proceedings under Section 32(4). In a given case, If any malafides are involved in applying under Section 18, that aspect may also influence the discretion under Section 32(4). To that extent, there may be no contra-diction. But in the present case, contradiction results mainly because the Appeal Court was not alive to the scope of the provisions.”

I would therefore have to consider the scope of Section 18 and effect, in the circumstances pleaded by the tenant, of the pending application under Section 18, and whether they constituted sufficient cause for rejecting the application under sub-Section 1 of Section 32.

28. In contrast to Section 32, Section 18 of the Rent Act, which falls under Chapter IV thereof, which prescribed payment and deposit of rent, contemplates an application for deposit of rent with the Controller in three situations:

- (a) Where there is bonafide doubt as to the person to whom the rent is payable.
- (b) Where the address of the landlord is not known to the tenant.
- (c) Where the landlord refuses to accept the rent from the tenant.

In all three cases, the procedure prescribed for such deposit is by an application under Rule 5 before the Rent Controller, who is required to pass orders thereon after conducting a summary

enquiry.

29. On the Controller passing orders to deposit, the landlord who claims such rent, would be entitled to receive the rent deposited. Section 19 specifies the time limit for making the deposit under Section 18 and the consequence for giving incorrect particulars in the application for deposit. The only consequence for non-deposit of rent directed to be deposited under Section 18, within the time specified under sub-section 1 of Section 19, is that such rent deposited beyond the period, would be considered to be an invalid deposit. Obviously, if such deposit is considered to be invalid under Section 19, either due to late deposit or on account of obtaining directions to deposit on an application containing incorrect particulars, it would open the tenant to grounds of eviction set out in Chapter V, and more particularly grounds stated in Section 22. The consequence of non-deposit or late deposit or an order obtained on incorrect particulars would be totally different from the consequence of non-deposit under sub-Section 4 of Section 32, which entails stoppage of proceedings followed by eviction.

The provisions of Section 18 are therefore totally independent of the provisions of Section 32 of the Rent Act and are completely inapplicable to matters of deposit of rent, once an Eviction proceeding under Chapter V of the Rent Act has been instituted and a notice of such proceeding has been received by the tenant. A tenant can therefore not resort to filing any independent application before the Rent Controller for deposit of rent under Section 18 of the Rent Act.

30. One would also have to consider the conduct of the tenant whilst presenting his appeal, considering that when the appeal was presented, there was no application pending under Section 18 of the Rent Act. In **Manik Lal** (supra), paragraph Nos. 8 and 11 read as under:

“8. It is a well-settled principle that the intention of the legislature must be found by reading the statute as a whole and in order to ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and what succeeds and not merely the clause itself. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs (see State of W.B. v. Union of India and R.S. Raghunath v. State of Karnataka). Therefore, it is necessary to give full meaning and effect to the provisions of sub-sections (2) and (3) of Section 13 of the Act. The full play and effect cannot be given to sub-sections (2) and (3) of Section 13 of the Act if the expression "prefer an appeal" is interpreted to mean that the payment to the landlord or deposit with the Rent Control Court of all arrears of rent admitted by the tenant to be due, is a precondition for filing a memorandum of appeal. However, if such payment or deposit of arrears of the admitted rent is not held to be a precondition for mere filing or presentation of memorandum of appeal, it will be possible for the Appellate Authority to give full effect to sub-sections (2) and (3) of Section 13 of the Act.

....

11. If the expression "prefer an appeal" occurring in sub-section (1) of Section 13 of the Act is interpreted in mean

the mere filing of a memorandum of appeal, it may also result in extreme hardship to the tenant or even make the provisions of Section 20 regarding an appeal against the order of the Rent Control Court nugatory in some cases. It may be noticed that under clause (b) of sub-section (1) of Section 20, the limitation for preferring an appeal against the order passed by the Rent Control Court is only thirty days. Therefore, if the appeal is not preferred within the said period of thirty days (excluding the period spent in obtaining the certified copy of the order appealed against), the same shall become barred by limitation and would be liable to be rejected on that ground alone. The tenant, on account of some personal difficulty or problem may not be in a position to deposit all arrears of rent admitted by him to be due within the period of thirty days. In such an event, he may be precluded from challenging the order of the Rent Control Court as the memorandum of appeal filed by him without making payment or deposit of arrears of rent would be liable to be rejected straightaway. We are, therefore, of the opinion that on a conjoint reading all the provisions of the Act and giving a fair and reasonable interpretation thereto, an appeal under Section 20 of the Act may be filed or presented without payment to the landlord or deposit with the Appellate Authority of all arrears of rent admitted by the tenant to be due, and it cannot be held to be incompetent. However, it will be open to the Appellate Authority not to proceed with the hearing of the appeal or to pass any interim order in favour of the appellant tenant until he has paid or deposited all arrears of rent admitted by him to be due, and for such purposes the Appellate Authority shall have all the powers under sub-sections (2) and (3) of Section 13 of the Act.”

31. In ***Dinanath Rama Naik*** (supra), paragraph Nos. 2, 8 and 10 read as under:

“2. Since a learned Single Judge, Lavande, J. being unable to agree with the judgment of the Division Bench in Mrs. Damayantiben Shivaji Chauhan V/s Dr. Dinesh Parekh and others reported in All India Rent Control Journal 1988(1) 520 having regard to the view taken by the another Division Bench in Maria Madeira e Fernandes V/s Vishnu Mahadeo Kanekar, reported in AIR 1987 Bom. 240 has referred the following question.

"Whether in an appeal preferred by a tenant against an order of eviction passed by the Rent Controller an application under Section 32(4) of the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, is maintainable, at the instance of the landlord on the ground that the tenant has not deposited the rents due during the pendency of the proceedings before the Administrative Tribunal?"

....

8. The question that falls for determination is whether in an appeal preferred by the tenant against an order of eviction, the landlord can apply for the stoppage of the proceedings and delivery of the possession on the ground that the tenant has not deposited the rent due during the pendency of the appeal before the Administrative Tribunal? Section 32 (1) enacts an unequivocal prohibition restraining against the tenant from contesting the proceedings for eviction whether before the Controller or any appellate or revisional authority or to prefer an appeal or revision under the Act unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, all the arrears of rent in respect of the building up to the date of the payment and continues to pay or deposit such amount until the termination of the proceedings. In short, it disentitles the tenant from contesting the proceedings for his eviction unless he has

paid and continues to pay the rent. The intention of this provision is to prevent multiplicity of proceedings whereby the landlord who is seeking eviction is compelled to institute other proceedings against the tenant for recovery of the rent. The provision also intends to ensure that a tenant fulfils his obligation of paying the rent due as a condition of his seeking protection of the rent. The Section expressly applies to all stages of the proceedings of eviction and up to the termination of the proceedings before the appellate or revisional authority. In terms, Section provides that the tenant cannot contest the proceedings or prefer any appeal or revision under the Act unless he has paid the rent to the landlord or deposited with the authority before whom the proceedings are pending and continues to do so till the termination of the proceedings before the Controller or the appellate or revisional authority. There is thus no scope for construing the provision in a manner that enables a tenant to withhold the rent if he has filed an appeal against his eviction as held in Mrs. Damayantiben Shivaji Chauhan's case. It is notable that the tenant is so prohibited, not depending on whether he is an appellant or a respondent in the appeal or revision but against him qua his character as a tenant against whom a proceeding for eviction has been instituted by the landlord. Thus, a tenant against whom a proceeding for eviction has been instituted by the landlord is not entitled to contest the proceedings before any appellate or revisional authority or even to prefer an appeal or revision unless he has paid all arrears of rent and continues to do so till the termination of the proceedings.

.....

10. We would note here the observations made in the judgment reported in (2003) 1 SCC 123 in the case of E Palanisamy V/s Palanisamy (Dead) by Lrs and others,

wherein it has been held that the rent legislation is normally intended for the benefit of the tenants. At the same time, the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The tenant has to observe the procedure as prescribed in the statute. Strict compliance with the procedure is necessary and the tenant is not entitled to deviate from the procedure as stipulated in the rent statute.

11. The Division Bench in Mrs. Damayantiben Shivaji Chauhan's case has observed that Rule 7 which prescribes the time and manner of making deposit of rent does not apply to the case of a tenant who has filed an appeal. That, therefore, it cannot be said that there is any Rule which governs the deposit of rent, since no manner is prescribed. This view, is not acceptable since the head note of the Rule prescribes the time limit and the manner for making deposit of the rent under Section 32. Section 32 wants a clear prohibition against a tenant to prefer an appeal or a revision unless he has paid to the landlord of deposit with the authority all arrears of rent. Then the time and manner is provided by this provision. The payment must be simultaneously with or before the appeal or revision is preferred and should be either directly to the landlord or deposits with the authority. This is probably why Rule 7 does not deal with a case where the tenant files an appeal. In this view of the matter, we answer the question in the affirmative and hold that an application under Section 32(4) of the Rent Act is maintainable at the instance of the landlord on the ground that the tenant has not deposited the rent due in an appeal preferred by the tenant against an order of eviction passed by the Rent Controller. Accordingly, the Writ Petition shall be placed before the appropriate Bench for disposal."

32. This Court, in ***Roque Rebeiro*** (supra) at paragraph 16 thereof held that where the Rent Controller finds default in deposit of rent by the tenant, it is not in every case of default that the proceeding is required to be stopped and possession is to be handed to the landlord. This Court has held therein that the provision of sub-Section 4 of Section 32 is directory in nature and not mandatory and requires the tenant to be heard on the reasons for his default. The judgment further held that some of the factors relevant for the decision and exercise of powers under sub-section 4 would be:

- (i) Whether the default is for short period or long period;
- (ii) Whether the default is wilful or unintentional;
- (iii) Whether the default is stray or persistent;
- (iv) Whether the payment was made at the earliest opportunity or after cantankerous contest;
- (v) Whether the default was bonafide or to harass the landlord.

33. ***Roque Rebeiro*** (supra) was considered by a Division Bench of this Court in ***Datta Anant Ghadi*** (supra), that reconsider the provisions of sub-section 4 of Section 32 and reviewed the entire case law on the subject, till then rendered, and has recorded the following conclusion:

“19. From various decision referred to above, it is clear that this Court has interpreted the provisions of Section 32(4) while taking in to consideration all other provisions of law contained in the said Act and more particularly

Section 22(3) as well as Section 22(4) of the said Act and the law laid down in the said decision can be summarised as under:-

- 1. Section 32 of the said Act prescribes a pre-condition for the tenant to contest the proceedings for eviction instituted by the landlord on any of the grounds provided under the said Act.*
- 2. The word 'contest' in Section 32 of the said Act embraces all the stages in the proceedings - the trial Court, the appellate Court as well as revisional Court.*
- 3. Section 32 of the said Act is independent of Section 22 of the said Act and both operates in different spheres.*
- 4. S.32(4) operates in all cases of eviction, whatever may be the ground of eviction, but S.22 (3) and 22(4) operate only in cases where eviction is sought on the ground of non-payment of rent under S.22(1)(a) of the said Act.*
- 5. The right to receive rent during pendency of proceedings is a statutory right under S.32(4) read with S.32(1) and Rule 7 of the said Rules and it provides an additional ground for eviction of a tenant.*
- 6. The stages spoken of in Section 22 are entirely different from what is mentioned in Section 32.*
- 7. In case of Section 22(3) and Section 22(4) there is no theme of contesting proceedings whereas the same very much exists under Section 32 of the said Act.*
- 8. It is not mandatory for the Rent Controller acting under Section 32 of the said Act to stop the proceedings and to order the tenant to deliver possession of the premises to the land-lord, no sooner there is default in payment or deposit of rent during the pendency of the*

proceedings and on the contrary ample powers are vested in the Rent Controller to decide whether the default is of such a nature to warrant the stoppage of the proceedings or one that can be condoned.

9. The power vested in the authority under the said Act to stop the proceedings and direct the tenant to put the landlord in possession of the building is directory and not mandatory and the authorities have to exercise their discretion having regards to the facts and circumstances of each case and bearing in mind the object of the statute as well as the said Section.

10. The cause required to be shown under S.22(4) of the said Act is against default to pay, tender or deposit rent, whereas the sufficient cause to be shown under S.32(4) of the Acts against stoppage of proceedings and as to why tenant be not directed to put landlord in possession. Thus the scope of cause to be shown under S.32(4) of the Act.

11. Section 3 of the said Act is intended to secure regular payment of rent during the pendency of the eviction proceedings, but at the same time, it provides opportunities to the tenant to justify non-stoppage of the proceedings irrespective of the default, if any.”

34. The upshot of the case law quoted above would be that the tenant is required, immediately on receipt of notice of the proceedings, to deposit all arrears of rent due till the receipt of notice. Thereafter, the tenant is required, as in this case, from month to month, to deposit by the 20th of each month, before the Rent Controller, the rent due for that month. Every remiss in deposit of subsequent rent within the time frame mentioned in Section 32 r/w. Rule 7 would render the tenant open to the

proceedings being stopped and direction to hand over possession of the premises in his occupation to the landlord.

As held in ***Dinanath Naik*** (supra) by Full Bench of this Court, an appeal filed by the tenant before the Appellate Tribunal or, for that matter, a revision application, would not be maintainable if not presented along with an application, in terms of sub-section 4 of Section 32 to tender arrears of rent payable till then, and after institution of the appeal, continue to pay rent from month to month (in this case by deposit of rent by the 20th day of every month before the District Court).

35. Applying the principles embodied in Section 32 of the Act, as observed in the above judgments, to the facts of the present case, on going through the entire record of the Rent Controller and of the Appellate Tribunal, I record the following conclusions:

- (a) The Eviction Case was not based on the ground of non-payment of rent but was based on the ground of structural changes effected to the premises. The Eviction Application was filed on 11.07.2005 and the written statement was filed by the tenant on 03.10.2005. From the date of service till filing of the written statement, there is no application filed by the tenant seeking deposit of rent from month to month or the arrears of rent. It is only on 12.09.2007 that an application styled as one under Section 18 was filed by the tenant alleging that the Landlady refused to accept rents from April, 2007 till July, 2007 though she had

accepted rents since the institution of the proceedings until March, 2007. Though this position was denied by the Landlady in her reply, the application (assuming it was under Section 32) was withdrawn on 29.10.2010, without any orders being passed thereon. Thus, there was no application under Section 32 for deposit of arrears or for deposit of rent from month to month pending before the Rent Controller, which is the only Forum before whom such application could be filed from 29.10.2010 onwards.

- (b) The tenant then filed an application dated 17.12.2010 under Section 18 of the Act, independent of the Eviction proceedings and kept the same pending until 18.11.2016, when it was dismissed for default. It is immaterial that no orders were passed by the Rent Controller on that application, since such an application did not lie in terms of Section 18 of the Act, the only application contemplated under the Act for deposit of rent being one under sub-section 1 of Section 32, which could only be filed before the Rent Controller dealing with the Eviction Application.
- (c) In the meanwhile, the Landlady filed an application dated 26.02.2011 under sub-section 4 of Section 32, calling upon the Rent Controller to stop proceedings in the application since the tenant had neither paid arrears of rent nor deposited rents from month to month as required by that provision.

- (d) Prior to dismissal in default of the aforementioned application under Section 18, the tenant moved another application on 18.06.2016, this time styled as one under Section 32(1) of the Act, and filed it before the Rent Controller (by then, a Civil Court). To the Application dated 26.02.2011, filed by the Landlady under sub-Section 4 of Section 32, the tenant filed a reply on 04.01.2012 taking objection to the jurisdiction of the Rent Controller to exercise powers under sub-section 4 of Section 32, claiming that in the absence of any orders passed on the tenant's independent application under Section 18 filed on 17.12.2010, eviction could not be ordered. On merits, the tenant contended that from April, 2007 to July, 2007, the tenant had paid rents through money order sent to the Landlady and thereafter the Landlady had been refusing to accept such money orders, after which he filed the aforesaid application under Section 18 of the Act.

The tenant was therefore aware that an application to stop proceedings was pending against him, and even then, did not show cause in his reply nor did he, show his bonafides by depositing all arrears of rent due, atleast till the date his reply was filed in this application. Here again, I must observe that all that the tenants had to do was to take an order to deposit all arrears, considering his case was that he was bonafidely pursuing an independent application under Section 18 (though not

permissible at law) before another Forum. Here again I must note that knowing the nature of the provisions of sub-section 4 of Section 32, the tenant has chosen to delay the eviction proceedings further by erroneously contending that the Rent Controller was foreclosed from exercising jurisdiction under sub-section 4 in view of the pending application under Section 18.

- (e) Four years were spent in this fashion by the tenant until 18.06.2016, when he filed an application, this time under sub-section 1 of Section 32, reproducing all the facts therein earlier stated in his first and second application under Section 18 and his reply to the Landlady's application under Section 32. There was however no justification for non-deposit of the rent from month to month in terms of Section 32 of the Act stated in this application. All that the tenant claims is that no orders were passed on his earlier application under Section 18 of the Act. There is also no explanation offered in the application as to why the tenant gave up his objection to the issue raised by him or the jurisdiction of the Rent Controller to decide the Landlady's application pending the tenant's application under Section 18. This is another reason to conclude that the entire exercise of filing these multiple applications, including this last one under Section 32(1) was to delay the Eviction proceedings which commenced in the year 2005 and had been dragged on till 2016 (more than 11 years).

- (f) This application under Section 32 was opposed by the Landlady, bringing to the notice of the Rent Controller that the earlier application under Section 18 of the Act filed on 17.12.2010 had in fact been dismissed for default since no instructions were forthcoming to the Advocate appearing for the tenant. That application was dismissed by the Civil Court on 18.11.2016. It is clear from these facts also that the application under Section 32(1) filed on 18.06.2016 in the Eviction proceedings, was moved during the pendency of the application under Section 18 which was dismissed only on 18.11.2016. This lends further credence to the contention of the Landlady that the application under Section 18 was only by way of a dilatory tactic to stall the Eviction proceedings and that the tenant was throughout aware that the only manner of deposit of rent was by an application in terms of Section 32 of the Act in the Eviction proceedings itself.
- (g) After the eviction order was passed on 04.04.2018 under Section 32(4) 13 years after the Eviction proceedings were instituted, the tenant, being fully aware that in terms of the judgment of this Court in ***Dinanath Naik*** (supra) was required to tender all arrears of rent by application under Section 32, along with his appeal memo, had in fact prepared and sworn such an application, but had chosen not to file the same along with the memo of appeal on 23.05.2018. This according to the tenant was on the specious plea that such

application could not be moved due to the appeal not having been registered, pending the hearing of the application for condonation of delay. Another two years were dragged on over the hearing of that application and the delay was ultimately condoned on 07.09.2021.

- (h) Even after the grant of condonation of delay on 07.09.2021, no application to deposit rent in terms of Section 32(1) of the Act was filed until 07.04.2022. Even in the application dated 07.04.2022, no mention or reference is made to the fact that the applicant had sworn an application under Section 32(1) at the time he presented the appeal. A second application under Section 32(4) came to be moved by the Landlady on 21.04.2022. It is this application, in the course of the appeal, that impelled the Appellate Rent Tribunal i.e. District Court to stop proceedings in the appeal and direct the tenant to put the landlady in possession of the suit premises. Here again, in the reply to the Landlady's application under Section 32(4) filed by the tenant on 05.05.2022, the only reason offered by the tenant was that the Covid-19 pandemic prevented him from depositing arrears of rent or rents due from month to month with no reference being made to the earlier defaults or his earlier application which he claims to have drafted and sworn, to be presented with his memo of appeal.

- (i) Considering the overall delay in moving the appropriate Forum to deposit rent and the stand taken by the tenant from time to time as referred above, the conduct of the tenant is clearly of a nature which is dilatory and of cantankerous contest. The delay is unexplained for various periods and the stand taken for non-deposit are both inconsistent and appear to be only with a view to delay the hearing of the Eviction Application on merits. Even before this Court, an order was passed on 11.10.2022 to deposit all arrears of rent due to the Landlady. No deposit was made from January, 2024 till hearings were concluded of this petition. The last deposit has been recorded on 23.12.2023, which leads me to believe that the contest of dilatory nature is persistent right up to this Court.

36. One of the contentions raised by the tenant is that he had shown his bonafides by attempting to pay rent from April, 2007 to July, 2007 by money orders which was refused by the Landlady. Rule 7, which sets the procedure and mode of payment for deposit of rent under Section 32 before the Rent Controller, contemplates only two modes of payment / deposit of such rent, one by direct payment to the landlord and the other by deposit under an order of the Rent Controller through a challan form. It does not allow for tendering such rent through a money order sent to the Landlady. This position has been clarified by the Goa, Daman and Diu Judicial Commissioner's Court in ***Chandrakant Govind Naik*** (supra) where the question as to

the manner in which rent due under Section 32 are to be tendered was in issue. What was held in paragraph 7 thereof is quoted hereunder:

7. I am in full agreement with the aforesaid view of the Administrative Tribunal. I am Fortified in this regard by the words in 5.32 (1) (underlining by me), the words "unless he has paid to the landlord", do not seem to include "tender". If that were the intention of the Legislature, there was no difficulty whatsoever in stating "unless he has tendered or paid to the landlord". Only two methods have been prescribed for complying with the requirements of the law as contained in sub-section (1) of S. 32. One method is to pay the amount (directly or indirectly) to the landlord and the other is to deposit the same with the Controller in case of refusal by the landlord to accept the payment (sent either by M.O. or through some other agency). A tenant has therefore either to pay the amount or deposit the same with the Controller, if he is unable to pay the amount, or the landlord refuses to receive it. As to the manner of deposit, R. 7 has been made pursuant to the provisions contained in sub-section (2) of S. 32. There appears to be no escape from the conclusion that remittance of rent by M.O. after filing of the proceedings for eviction is of no avail and the tenant cannot, taking advantage of such remittance, contend that he has complied with the requirement of paying the rent to the landlord and no obligation is cast on him to deposit the same. In this view of the matter, there cannot be two opinions that the petitioner has failed to comply with the requirements of law. The finding of the learned Administrative Tribunal on this score is therefore endorsed.

37. In **Balwant Singh** (supra), the Supreme Court has reiterated the position of law that where a Rent Statute which is beneficial legislature contemplates payment of rent in a specified manner and within a specified time, such rent is to be paid or deposited in the manner specified under the enactment. Paragraph No. 4 to 7 reads as under:

“4. The provisions of the said Act would clearly show that unlike Rent Control Statutes of other States, the expression wilful default or habitual default has not been used therein. The words are is in arrears.

In the event, rent for two months is not paid a cause of action arises. The statute mandates that the rent should be paid within the time fixed by the contract and in absence thereof by the last date of the months next following The obligation on the part of the tenant to pay rent in the manner laid down under the Act, being a statutory one, he must comply therewith strictly. The statute, therefore, in other words, prescribes the period within which the rent must be rendered to the landlord by a tenant When the statute lays down the period during which the rent is required to be paid or deposited, the same is required to be complied with.

5. Recently, in *E Palanisamy vs. Palanisamy (dead) by Lrs and others* (2003 (1) SCC (23), a Division Bench of this Court observed:

"The rent legislation is normally intended for the benefit of the tenants At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters."

6. It is also pertinent to note that the Rent Control Act is not only a beneficial enactment for the tenant but also for the benefit of the landlord (See *Shri Lakshmi Venkateshwara Enterprises Pvt. Ltd vs. Syeda Vajuninissa Begum (Smt.) and others* 1994 (2) SCC 671).

7. Yet there is another aspect of the matter which cannot be lost sight of It is a well settled principle that if a thing is required to be by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefore are specified In *Sutherland, Statutory Construction*, 3rd edition, Vol 3 at p. 107. 1 pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision At page 11 it is stated as follows:

"As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this in only an element to be considered, and is by no means conclusive."

The same view has been taken in **Noor Mohammad** (supra) at paragraph Nos. 14, 15 and 16, which are quoted below:

14. The remedy for failure to pay interim compensation as directed by the court is thus provided for by the legislature. The method and modality of recovery of interim

compensation is clearly delineated by the legislature. It is well-known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in Nazir Ahmad v. King-Emperor, a Bench of three Judges of this Court made the following observations in State of U.P. v. Singhara Singh. (AIR p. 361. paras 7-8)

"7. In Nazir Ahmad case the Judicial Committee observed that the principle applied in Taylor v. Taylor, Ch D at p. 431 to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves'.

8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been en-

acted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."

(emphasis supplied)

15. In J.N. Ganatra v. Morvi Municipality, exercise of power of dismissal having not been done in conformity of the Act, the same was set aside. It was stated: (SCC p. 498, para 4)

"4. We have heard the learned counsel for the parties. We are of the view that the High Court fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of Rule 35 of the Rules, was an 'act done in pursuance or execution or intended execution of this Act...'. It is no doubt correct that the General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by Rule 35 of the Rules. Admittedly the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in

no other manner. In view of the categoric finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules. It cannot be treated to have been passed under the Act."

16. In *CIT v. Anjum M.H. Ghaswala*, a Constitution Bench of this Court stated the normal rule of construction in such cases as under: (SCC p. 644, para 27)

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

38. In **Girish Gangadhar Agarwal** (supra), which was a matter arising under the Maharashtra Rent Control Act, this Court has reiterated that a mere desire to pay the rent is not enough, and it must translate into action since the tenant is under obligation to comply with the demand and to explain as to how, in his view rent was not payable or that it was paid.

39. In **Debashish Paul** (supra), the Supreme Court, dealing with a rent case has dealt with the effect of prosecuting a rent case on the basis of incorrect legal advice and had made the following observations :

“19. The respondent neither paid the rent, nor deposited the rent by moving the application nor deposited it within the extended time as stipulated in the proviso. The mere allegation of absence of correct legal advice cannot come to the aid of the respondent as, if such a plea was to be accepted it would give a complete licence to a tenant to occupy premises without payment of rent and then claim that he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow.”

Thus, the contention that an attempt was made to pay rent for some time during the pendency of the proceedings through money orders, a method not contemplated by Section 32 of the Act, necessarily has to be repelled.

40. In **Celina Coelho Pereira**(supra), which was a rent case arising under the Rent Act, the Supreme Court has considered the scope of powers of the High Court under Article 227 of the

Constitution of India whilst examining orders of eviction and appellate orders in Eviction proceedings. Certain observations from that judgment are quoted below:

“30. In Bathutmal Raichand Oswal v. Laxmibai R. Tarta this Court held: (SCC p. 865, para 7)

"7. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts."

31. In State v. Navjot Sandhu this Court explained the power of the High Court under Article 227 thus: (SCC pp. 656-57, para 28)

"28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and

tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised 'as the cloak of an appeal in disguise'."

32. The aforesaid two decisions and few other decisions, namely, Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, State of Maharashtra v. Milind and Ranjeet Singh v. Ravi Prakash came to be considered by this Court in Shamshad Ahmad v. Tilak Raj Bajaj and this Court held: (Tilak Raj case, SCC pp. 10-11, para 38)

"38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, no reweigh the evidence upon which determination of a subordinate court or Inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law."

41. In the present case, the Rent Controller has correctly appreciated the subject matter of the application under 32(4) before it and has applied the correct principles of law whilst

deciding the same. This is borne out from the observations made in great detail, as to the conduct of the tenant, in paragraph 11 of its order. This was after referring to and applying the principles laid down in ***Roque Rebeiro*** (supra). The findings contend in the judgment of the Rent Controller cannot be faulted.

Independent of these findings, the Appellate Tribunal/District Court has considered the second application under Section 32 of the landlady in even greater detail, and has on applying the legal principles contained in the judgments referred to by me above, concluded in paragraphs 30 to 40 thereof the scope of Section 32(4); it has then applied all these principles, after referring to ***Dinanath Naik*** (supra) to the fact before it, and correctly concluded in paragraphs 56 to 60 of its judgment that the entire contest by the tenant was dilatory and necessitated stoppage of the proceedings resulting in eviction.

Applying the law laid down in ***Celina Coelho Pereira*** (supra), there is absolutely no case made out to upset the finding arrived at by the Rent Controller and the Appellate Tribunal in the present case.

42. The petition is therefore dismissed with no order as to costs. The Petitioner/tenant shall handover the vacant possession of the suit premises/building within two months from the passing of this judgment.

VALMIKI MENEZES, J.

Judgement continued on 09.05.2025

43. At this stage, learned Advocate Mr. Ressano Hector Noronha, appearing for the Petitioners, has requested to vacate the interim order dated 11.10.2022 granting stay of the Judgment and order of the Rent Controller dated 04.04.2018. Consequently, there was a stay operating on the order of the Rent Controller from being executed. A request is made to extend the operation of the interim order by a period of 12 weeks from today to enable the Petitioners to challenge the same before the Hon'ble Supreme Court. The request to extend interim relief is objected to by Ms. Samiksha Vaigankar, learned Advocate appearing for Respondent No. 1, stating that the period of 12 weeks will be too long as there are concurrent findings of two Courts below.

44. However, considering that the interim relief was in operation from 11.10.2022 till date, the same stands extended by a period of 8 weeks from today. Consequently, the execution of the order dated 04.04.2018 of the Rent Controller shall stand stayed for a period of 8 weeks from today.

VALMIKI MENEZES, J.