



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 194 OF 2025

1. Suhas Jayram Sirsat, aged 71 years, s/o Jayram Ramchandra Sirsat, resident of Mapusa, c/o. Sirsat Lodge, near taxi stand, Mapusa, Bardez Taluka, Goa. Mobile No. 9923373399 email: sirsat.lodge@gmail.com
2. Jayram Ramchandra Sirsat, aged 98 years, s/o Ramchandra Shankar Sirsat (deceased; his legal heirs are Petitioners 1, 3, 4, 5, 6 and 7)
3. Hiralal Jayram Sirsat, aged 73, s/o Jayram Ramchandra Sirsat,
4. Amrutlal Jayram Sirsat, aged 65 years, s/o Jayram Ramchandra Sirsat,
5. Ramchandra Jayram Sirsat, aged 62 years, s/o Jayram Ramchandra Sirsat,
6. Sanjay Jayram Sirsat, aged 59 years, s/o Jayram Ramchandra Sirsat,
7. Sandesh Jayram Sirsat, aged 56 years, s/o Jayram Ramchandra Sirsat,
8. Mrs. Kusum Anand Sirsat, (expired on 08-03-2018 without leaving any legal heir)
9. Mayur Shankerlal Sirsat, aged 54 years, s/o Shankerlal Ramchandra Sirsat,
10. Motilal Govind Sirsat, aged 71 years, s/o Govind Ramchandra Sirsat,
11. Shantilal Govind Sirsat, aged 64 years, s/o Govind Ramchandra Sirsat,

12. Jayant Govind Sirsat, aged 62 years, s/o
Govind Ramchandra Sirsat,

13. Ashok Govind Sirsat, aged 57 years, s/o
Govind Ramchandra Sirsat,

Petitioners 3-7 and 9-13 are residents of
Mapusa, c/o. Sirsatr Lodge, near taxi stand,
Mapusa, Bardez, Goa.

...Petitioners

V e r s u s

Hotel Poornima, represented by Mr.
Shekhar Kashinath Naik, aged 56 years,
Room nos. 120 to 126, Ramchandra
Building, Mapusa, Goa, Presently residing
at flat No. S-5, Second floor, St. Joseph
Apts, Punola, Ucassaim, Bardez, Goa.

Since Shekhar Kashinath Naik is deceased
represented by LRs

1(a) Kalpana Shekhar Naik, major of age,
widow of Shekhar Kashinath Naik

1(b) Mr. Sanket Shekhar Naik, major of
age, s/o Shekhar Naik

1(c) Mrs. Shivani Shekhar Naik @ Shivani
Digamber Kauthankar, major of age, d/o
Shekhar Naik and her husband;

...Respondents

Mr. L. Joseph Deva, Advocate for the Petitioners.

**Mr. Amay Phadte, Advocate for Respondent nos. 1(a), 1(b)
and 1(c).**

CORAM DR. NEELA GOKHALE, J.
DATED: 27th MARCH 2026

JUDGMENT

1. Rule made returnable forthwith. By consent of both the parties, the matter is being heard finally. Learned Counsel appearing for the Respondents waive notice.

2. By way of the present Petition, the Petitioners seek to quash and set aside the Judgment and Order dated 26th March 2025 passed by the Appellate Court (FTC-Mapusa) in Rent Appeal No. 7/2022 and the Order dated 6th May 2022 passed by the Trial Court at Mapusa in Civil Misc. Application No. 25/2018/F setting aside the ex-parte Judgment and Decree dated 5th January 2018 in Rent Case No. 3/2016/F. The Petitioners further seek restoration of the ex-parte Judgment and Decree dated 5th January 2018, passed in favour of the Petitioners in Rent Case no. 3/2016/F, along with all the consequential benefits and execution rights arising therefrom. There are other reliefs sought by the Petitioners.

3. The facts of the case in brief are as under :

3.1. The Petitioners are the landlords, and the Respondents are the legal heirs of the deceased tenant. The Petitioners filed an application against the Respondents for eviction and recovery of arrears of rent under Section 22 of the

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, ('Rent Control Act'), seeking eviction of the tenants on the ground that rent for 64 months had remained unpaid and the tenants were in default of the payment of the rent. The said application was numbered as Rent Act Suit No. 03/2016/F. The said suit was decreed ex-parte by Judgment and Decree dated 5th January 2018, wherein the Respondents were directed to vacate the suit premises and hand over the possession of the suit premises to the Petitioners. They were also directed to pay arrears of rent amounting to Rs. 45,500/- to the Petitioners and further rent from the date of filing the case till the vacant possession of the suit premises was actually handed over to the Petitioners.

3.2. Pursuant to the said ex-parte Judgment and Decree dated 5th January 2018, the Petitioners filed a Regular Execution Application bearing No. 6/2018/F. The Executing Court issued notices to the Judgment Debtor, i.e. the Respondents herein, of the Execution Application. It is alleged by the Respondents that neither the notice of the Civil Suit nor the notice of the Execution Application was received by them at the addresses furnished by the Petitioners to the Court as the addresses of the Respondents. However, they learnt of the pendency of the Execution Application

when they received a notice of the said Execution Application served to him on the suit premises. It was at this point in time that the Respondents learnt that a Suit had been instituted by the Petitioners for their eviction, which had been decreed ex-parte leading to the Petitioners filing the Execution Application.

3.3. The Respondent appeared before the Executing Court and also filed an application for setting aside the ex-parte Judgement and Order dated 5th January 2018 passed in Rent Act Suit No. 3/2016/F and also sought restoration of the said Suit for him to put forth his defense.

3.4. After hearing both sides, the Executing Court, by its Order dated 6th May 2022, set aside the ex-parte Judgment and Decree passed by it in Rent Act Suit No. 3/2016/F and restored the Suit to its original file to be decided on merits. The Petitioners challenged this Order dated 6th May 2022 before the Appellate Court, i.e. the District Court (FTC) at Mapusa. The Appellate Court, after hearing both sides, was pleased to dismiss the Appeal by its Judgment and Order dated 26th March 2025.

3.5. Aggrieved by the dismissal of their Appeal, the Petitioners have filed the present Writ Petition assailing the Order

dated 26th March 2025 passed by the District Court (FTC) at Mapusa. Along with this Order, the Petitioners have also challenged the Orders dated 6th May 2022, dismissing their Execution Application, and dismissing their application seeking possession of the suit property for non-payment of rent by the Respondents under Section 32 of the Rent Control Act.

4. Heard Mr. Joseph Deva, learned Counsel appearing for the Petitioners and Mr. Amay Phadte, learned Counsel appearing for the Respondent Nos. 1(a), 1(b) and 1(c).

5. Submissions of Mr. Joseph Deva :

(i) According to Mr. Deva, the Appellate Court erred in assigning greater evidentiary value to a third-party Panchayat letter over the official bailiff's report. According to Mr. Deva, the bailiff had personally effected service on a woman identified as Shweta Shekhar Naik, who is the wife of the Respondent.

(ii) He also submits that both the Appellate Court and the Trial Court erred in disregarding the legal sufficiency of facial recognition and consistent past interaction in connection with Shweta Shekhar Naik as being identified as the Respondent's wife.

(iii) He also submits that the discrepancy between "House No. 69" and "69/G" in the address furnished by him to the Trial

Court is not fatal to the service, as both refer to the same physical address, and a minor inconsistency does not vitiate service when the person is effectively reached.

(iv) He submits that the Appellate Court has committed a fundamental jurisdictional error and has not taken into account that the Respondents have failed to deposit the rent of the suit premises. In these circumstances, Section 32(1) of the Rent Control Act will be applicable, and the Respondent should not be allowed to contest any proceeding unless and until the entire amount of rent is deposited before the Court.

(v) He submits that both the Appellate Court and the Trial Court erroneously held the service on the Respondent as invalid on the ground that the bailiff incorrectly or falsely recorded the name of the recipient, i.e. the Respondent's wife as 'Shweta Naik' when her is 'Kalpana Naik'.

(vi) On these grounds, Mr. Deva prays that the Judgment and Order dated 26th March 2025 passed by the Appellate Court be quashed and set aside, and the Judgment and Decree dated 5th May 2018 in Rent Suit No. 3/2016/F be restored.

6. Submissions of Mr. Amay Phadte :

(i) On the other hand, Mr. Phadte, learned Counsel appearing for the Respondent, draws my attention to the affidavit in reply filed by Mrs. Kalpana Shekhar Naik, widow of Respondent-Shekhar Naik. At the very outset, he submits that the said Shweta Naik, who is stated to have received the summons from the Bailiff, is not at all the wife of the deceased Shekhar Naik, who is the original tenant of the suit premises. The name of his wife is Kalpana Shekhar Naik, and in fact, the said Kalpana Shekhar Naik has never received the summons issued by the Court.

(ii) He further submits that he has deposited the entire arrears of rent in the Trial Court. He submits that the deposit of the said entire amount of arrears of rent is not disputed by the Petitioner.

(iii) Mr. Phadte has also filed an affidavit before this Court pursuant to the orders of this Court dated 17th February 2026 directing him to file an affidavit of the Respondents to place on record that the entire amount of arrears of rent has been deposited.

(iv) He further submits that the service of notice of the original rent suit was made on an erroneous address and the said

wrong address was deliberately furnished by the Petitioners to deprive the Respondents of an opportunity of being heard before the Trial Court.

(iv) Mr. Phadte also submits that the Respondent and his wife Mrs. Kalpana Shekhar Naik, resides at S-5, Second Floor, St. Joseph Apts, Punola, Ucassaim, Bardez, Goa, and the same property is purchased by the Respondent's daughter in law, namely, Gauri Kamat Wagh, and not at the address House No. 69, Telya Waddo, Santa Cruz, Bastora, Bardez, Goa, where the alleged notice was served on a fictitious person, namely, Shweta Shekhar Naik and not at his address.

(v) He also submits that the Respondent was bedridden and suffering from bilateral above-knee amputation following wet gangrene of feet for the last three years, due to which he was in financial crisis, hence, he had defaulted for some time in payment of rent. As stated herein above, the entire arrears of rent have now been deposited.

(vi) For all these reasons, Mr. Phadte states that the ex-parte Judgment and Decree passed in the Rent Act Suit No. 3/2016/F is not tenable, and the impugned Order dated 26th March 2025 passed by the Appellate Court, restoring the said Suit

for disposal on merits, is sustainable. He thus prays that the Petition be dismissed.

7. I have heard both the learned Counsel appearing for the respective parties. I have also gone through the records with their assistance.

8. Before advertng to the facts of the present Petition, it is necessary to set out the relevant provision of law. Section 32 of the Rent Control Act, reads thus :

“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.”

9. The thrust of the arguments of Mr. Deva is that even if the address at which the Respondent was served, may not have been accurate, in any case as per Section 32 of the Rent Control Act, unless and until the tenant deposits the entire arrears of rent, he is not entitled to contest the proceedings before the Rent Controller or any other Appellate or Revisional Authority. He thus submits that, since it is clear that the Respondent had not deposited the entire arrears of rent, the Respondents could not have made any application to set aside the Judgment and Decree passed ex parte against him. Mr. Deva terms making an application to set aside the exparte judgment and Order of eviction, as ‘contested’ in the

strictest sense. He thus submits that without paying the arrears of rent, the Trial Court ought not to have entertained the application for restoration of the Rent Suit.

10. A plain reading of the impugned Judgment and Order clearly indicates that the Petitioner in the Rent Suit had provided the address of the Respondent as Hotel Poornima, represented by Mr. Shekhar Kashinath Naik, Room No. 102 to 126, Ramchandra Building, Mapusa, Goa. Accordingly, notice was issued to the Respondents at the said address at the Hotel Poornima. The Bailiff report indicates that the said notice was returned unserved as the main door of the hotel was closed and locked. Thereafter, the Petitioners made an application for amendment wherein the address of the Respondent (now deceased), as proprietor of the Respondent No.1 Hotel was given as House no. 69, Telya Waddo, Santa Cruz, Bastora, Bardez, Goa. Accordingly, the Trial Court issued notice to the freshly furnished address of the Respondent. As per the bailiff's report submitted to the Trial Court, the notice was stated to be served on the wife of the Respondent, namely, Shweta Shekhar Naik. It is further clear from the concurrent findings of the Trial Court as well as the First Appellate Court that the Respondent was never served in the Rent Suit, and he derived

the knowledge of the same only when he was served with the Execution Application at the premises of the hotel. It has also been established that the Respondent's wife name is not Shweta Naik but is Kalpana Naik. Hence, the Trial Court as well as the First Appellate Court have concluded that the notice was served on a lady, who was not the wife of the Respondent. Hence, both the Courts below have termed the notice on the Respondent as bad service.

11. In these circumstances, in order to comply with the principles of natural justice and to afford an opportunity of hearing to the Respondent, the Trial Court set aside the ex parte Judgment and Decree and restored the Rent Suit to its original file for its determination on merits. The Appellate Court upheld that Order. I see no infirmity in either of the decisions of the Courts below.

12. Insofar as the arguments of Mr. Deva in respect of Section 32 of the Act are concerned, a plain reading of the provision reveals that a tenant against whom a proceeding for eviction is instituted by a landlord under the Act, shall be entitled to contest the said proceedings only if he has paid to the said landlord or deposited in the said Court the entire arrears of rent in respect of

the suit premises. By way of restoring the suit, the Trial Court has not permitted the Respondent to per se contest the suit without depositing the arrears of rent. The Trial Court has only held that the service of the Suit to the Respondent is bad in law and is not good service. In these circumstances, the Trial Court has set aside its own ex-parte Judgment and Decree and restored the Suit to its original file. In the event that the Trial Court concludes that the Respondent has not deposited the entire arrears of rent, it is always open for the Court to refuse to allow the Respondent-tenants to 'contest' the Suit. At this stage, all that the Trial Court has done is to hold the notice of the suit to be wrong service.

13. In these circumstances, I do not find any need for interference in either the Judgment and Order passed by the Trial Court nor the Judgment and Order passed by the Appellate Court. In any case, pursuant to the Orders of this Court passed on 17th February 2026, the Respondent has placed an affidavit stating that the entire arrears of rent have been directly paid to the landlord i.e. the Petitioner.

14. In view of the aforesaid discussion, the Judgment and Order dated 26th March 2025 passed by the District Court (FTC), North Goa at Mapusa in Rent Appeal No. 7/2022 and the Order dated 6th

May 2022 passed by the Civil Judge Junior Division at Mapusa in Civil Misc. Application No. 25/2018/F setting aside the ex-parte Judgment and Decree dated 5th January 2018 in Rent Case no. 3/2016/F, are upheld.

15. Since more than seven years have elapsed from the time the Rent Suit was originally filed by the tenant, the Trial Court is requested to expedite the trial. Needless to state, that all contentions of all the parties are left open to be agitated before the Trial Court.

DR. NEELA GOKHALE, J.