
(1991) 07 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No. 133 of 1989

Avelino De Souza

APPELLANT

Vs

Chairman, Administrative Tribunal and Others

RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Evidence Act, 1872 — Section 114

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22, 22(2), 22(3), 22(4), 32

Citation : (1992) 1 BomCR 334

Hon'ble Judges : E.S. Da Silva, J

Bench : Single Bench

Advocate : J. Coelho Pereira, for the Appellant; M.S. Usgaoncar, Senior Advocate and S.S Usgaoncar, for the respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

E.S. Da Silva, J.—The petitioner is the landlord of a building bearing House No. 123/2, situated at Duler, Mapusa, Goa and respondent No. 3 (hereinafter called "the respondent" is the tenant of the petitioner. The rent payable in respect of the said building was Rs. 20/- per month. Since the respondent was in arrears of rent for a period of 24 months, from October, 1977 to September, 1979, in the total amount of Rs. 480/- the petitioner filed an application in October 1979 before the Rent Controller (hereinafter called the Controller), u/s 22(I)(a) c the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called the Act) after serving on him a notice for payment of the said rents. The respondent before filing his written statement raised a dispute u/s 32(3) of the Act, by his application dated 11-12-1979, claiming that the rents were paid by him upto September, 1978 and when in November, 1978 he had taken the rent for October. 1978, the same was refused by the petitioner's mother who threw the money at his face. He has further claimed that the petitioner's mother had never issued receipts in the past and therefore the

arrears of rent from October, 1977 were false. On 14th December, 1979, the respondent filed his written statement wherein he also denied that he was in arrears of rent. Thereupon an inquiry was held by the Controller u/s 32 of the Act and after evidence was recorded the respondent was ordered on 22-8-1980 to deposit the rents as claimed by the petitioner. A regular inquiry followed on merits of the application during which both the parties adduced evidence. By order dated 21-11-1981 the Controller directed the respondent's eviction from the suit premises holding, inter alia, that the respondent's evidence was full of inconsistencies. The Controller did not accept the version of the respondent that the rents had been refused by the petitioner's mother. The Controller gave also a finding that the respondent had not been able to show sufficient and reasonable cause for his failure to pay the arrears of rent and even assuming the respondent was a poor man, as claimed by him, however that should not prevent him from paying to the petitioner the party amount of Rs. 20/- per month which could have been even paid every month, in case the petitioner's mother had refused to accept, by Money Order which the respondent has also failed to do. The Controller also held that the respondent had displayed carelessness and negligence in paying the rents due and, therefore, the petitioner was entitled to get the vacant possession of the premises. Hence he ordered the respondent to hand over within 60 days from the date of the order.

2. The respondent dissatisfied with the order of the Controller filed an appeal before Administrative Tribunal which, by his judgment dated 7th December, 1988, reversed the order of the Controller by holding that the respondent had complied with the Controller's orders under the provisions of sub-sections (3) and (4) of section 22 of the Act and therefore he could not be liable for eviction under sub-section (a) of section 22 of the said Act. It is this judgment and order of the Administrative Tribunal which is being challenged by the petitioner in this writ petition filed by the respondent under Articles 226 and 227 of the Constitution.

3. It was firstly submitted by Shri Coelho Pereira, the learned Counsel for the petitioner, that the impugned judgment of the Administrative Tribunal is basically erroneous and perverse a truly non-speaking judgment which is lacking in foundation either in facts or in law. Shri Coelho Pereira stated that for that matter the learned Tribunal grossly overlooked that the respondent has never contended that because he had availed of the provisions of section 32(3) of the Act in the proceedings for eviction instituted by the petitioner against him on the ground of non-payment of rents, the provisions of section 22(2)(a) of the Act were also attracted in the case. Indeed it was wrong on the part of the Tribunal to hold that since the respondent had ostensibly complied with the orders of the Controller in terms of sub-sections (3) and (4) of section 22 of the Act no orders u/s 22(a) of the Act could be made. Shri Coelho Pereira urged that if it was a question of holding that the case of the respondent was covered under sub-sections (3) and (4) of section 22 of the Act then the petitioner could have never been made to pay the costs of the proceedings as it was directed by the Tribunal

and, on the contrary, such costs would be required to be paid by the said respondent as expressly provided in sub-section (3) of section 22 (in fine) of the Act. Similarly the Tribunal was in error in holding that the respondent's case would be covered at the same time by sub-sections (2) and (3) of section 22 of the Act not only because, on facts, the Controller had given a finding, which the Tribunal did not disturb, to the effect that the respondent had failed to show reasonable and sufficient cause to pay the arrears of rent but also because if the respondent had complied with sub-section (3) of section 22 of the Act on account of the payment or deposit of rents eventually made by him within 30 days from the institution of the proceedings, as concluded by the learned Tribunal the question of operation of sub-section (4) could not have even arise. This by itself shows non-application of mind by the Tribunal and complete misconstruction of the provisions of sub-section (4) of section 22 of the Act so much so, admittedly, there was not even an application on record made by the respondent to the Controller for the purpose of condoning this default to pay, tender or deposit the rent on the ground of a reasonable cause.

4. In order to appreciate all these submissions of Shri Coelho Pereira we must usefully refer to the very scheme envisaged in the Act as prescribed by its aforesaid sections 22(2)(a) and 32.

5. Section 22(2)(a) of the Act which provides for the grounds of eviction on account of non-payment of rents prescribes, that if the Controller is satisfied, after giving the tenant a reasonable opportunity of showing cause against the application, that the tenant is in arrears in payment of rent due by him for a total period of three months and has failed to pay or tender such arrears of rent, within thirty days of the receipt of or of the refusal of a registered notice served on him by the landlord for such arrears, shall make an order directing the tenant to put the landlord in possession of the building. Sub-section (3) to section 22 provides that no order for eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (2) if the tenant, within thirty days of the service of the summons of proceedings on him, pays or tenders to the landlord or deposits with the Controller the arrears of rent due by him upto the date of such payment, tender or deposit, together with costs of the application. Sub-section (4) to section 22 says that in any proceedings falling under Clause (a) of sub-section (2) if the Controller, on an application made to it, is satisfied that the tenant default to pay, tender or deposit rent was not without reasonable cause he may, after giving the parties an opportunity of being heard, give the tenant reasonable time to pay or tender the rent due by him to the landlord upto the date of such payment or tender and on such payment or tender the application shall be rejected

6. In its turn section 32 of the Act, which speaks of payment or deposit of rent during pendency of proceedings for eviction, provides in its sub-section (1) that no tenant against whom a proceeding for eviction has been instituted by a landlord under the Act shall be entitled contest the proceedings before the

Controller or any appellate or revisional authority or to prefer any 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 arrears of rent due in respect of the building..... Sub-section (2) of section 32 reads that the deposit of rent under sub-section (1) shall be made within such time and in such manner as may be prescribed. Sub-section (3) to section 32 says that 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. Sub-section (4) to section 22 prescribes that if any tenant fails to pay or 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.

7. It follows therefore that section 32(1) of the Act provides for a general rule in all cases wherein eviction proceedings have been instituted by the landlord against the tenant under the Act by expressly forbidding or stopping the tenant to contest the proceedings unless he has paid or deposited, in terms of sub-section (2), all arrears of rent due whether the eviction proceedings were or not instituted by the landlord against the tenant on the specific ground of non-payment of rents. In other words, this duty or obligation cast upon the tenant to first pay or deposit the entire arrears of rent before he contests the proceedings for eviction, applies in all cases and/or proceedings for eviction instituted by the landlord against the tenant irrespective of the various grounds provided in section 22 and obviously cover also the specific ground, if availed by the landlord, of the tenant's default in the payment of rents. However, in the particular case of section 22(a), when the landlord has sought for the tenant's eviction alleging that he is in arrears of rent for more than 3 months, section 22(3) of the Act prescribes a special procedure aimed at protecting the tenant from eviction by directing that the whole proceedings should be stopped if the tenant, within thirty days of the service of the summons of proceedings on him, pays or tenders to the landlord or deposits with the Controller the arrears of rent due upto the date of such payment, tender or deposit together with the costs of the application. But if the tenant instead of paying, tendering or depositing the arrears within thirty days, as prescribed in sub-section (3), chooses to move the Controller during that period by invoking just and reasonable cause for his default to pay, tender or deposit, then, the Controller, if satisfied with the reasons alleged by the tenant, may give him a further reasonable time to pay or tender the rent due to the landlord upto the date of such payment or tender and on such payment or tender, the application shall be rejected.

8. This means that, when a landlord institutes proceedings for eviction of the tenant on the ground of non-payment of rent, two situations may arise, being one in case the tenant admits his default and pays or tenders to the landlord or

deposits with the Controller the arrears of rent in terms of sub-section (3) and the other when he pleads before the Controller that his default was due to a reasonable cause in which case the Controller, on an application made by him (underline supplied) under sub-section (4), if satisfied, can give to the tenant a further reasonable time to pay or tender the rents due by him to the landlord. Hence it is obvious that sub-section (4) and sub-section (3) of section 22 of the Act cannot ever operate together and one necessarily excludes the other, although in both the situations the result is the same and, on payment of the arrears of rent claimed by the landlord as due, the tenant ultimately succeeds in avoiding his eviction from the premises in all cases where the eviction was sought for by the landlord on the ground of non-payment of rents. But, as it is obvious, this situation presupposes that the tenant has not disputed (underline supplied) the amount of the arrears of rent claimed by the landlord and opts either to pay or tender the same within thirty days from the date of the service of the summons of proceedings or to file an application to the Controller, in terms of sub-section (4), pleading a reasonable cause for default and praying for time to effect the payment, tender or deposit of the arrears due. This is indeed, in our view, the only and exclusive field of the applicability of section 22(a) of the Act.

9. However, in case the tenant or the landlord dispute the quantum (underline supplied) or the amount of rent, in any eviction proceedings instituted by the landlord against the tenant irrespective of the grounds invoked by the landlord, which the tenant is required to pay or deposit so as to be entitled to contest the proceedings in terms of section 32 of the Act, then, sub-section (3) comes into play and the tenant or the landlord are bound to raise such dispute before the Controller or other competent authority who shall summarily dispose of the same after making an inquiry, if any, and in that case the Controller will determine the rent to be so paid or deposited. And if after that the tenant still fails to pay or deposit the amount of the rent so determined, then, the Controller or the appellate or revisional authority is free to stop all further proceedings and give possession of the premises to the landlord, unless if he is satisfied that such failure on the part of the tenant was due to sufficient cause.

10. This being the position it seems that there is no reason for any misconstruction of both the provisions of section 22(a) and section 32 of the Act which are thus to apply within the specific bounds of the areas of its operation and/or in the given situations arising out of the facts occurring in the prevailing circumstances. As such both these provisions can be harmoniously construed without conflicting with each other. But even assuming that there may be any situation leading to a likely clash between the two, in a case wherein the landlord has sought the tenant's eviction on the ground of non-payment of rents and the tenant disputes that amount of arrears of rent claimed by the landlord in terms of section 32(3), still then, in our judgment, section 22(3) shall prevail as being a provision specifically applicable to eviction proceedings instituted under sub-section (2)(a) of section 22 and in that case the tenant is always bound to comply with that provision, at least to the extent of the undisputed portion of

arrears claimed by the landlord, if he wants to be spared from the drastic consequences of his failure so as to avoid his immediate eviction from the rented premises.

11. It is in this context and bearing also in mind the legal position as exposed above that the grievances made by Shri Coelho Pereira against the judgment of the Tribunal assume considerable relevance and appears to be quite justified. The facts of the case show that by his application dated 5-11-1979 the petitioner applied to the Controller that the respondent be directed to put him in possession of the suit premises on the ground that he was in arrears of rents from the month of October, 1977 upto September, 1979 in the sum of Rs. 480/- and that, inspite of a notice sent to him calling upon to pay the rents due within thirty days from the receipt of the notice, the said notice was returned to the applicant as unclaimed and that more than thirty days thereafter he again failed to clear his dues. On receipt of this application by the Controller on 8-11-1979 the matter was fixed for hearing on 14-12-1979 with a direction that notices to be issued to the parties. It appears that the respondent, after receiving the notice of the Controller, filed an application u/s 32(3) of the Actstitioner was to be worked out in respect of 14 months only and in the total sum of Rs. 280/- which he was willing to pay or deposit in the Court. Hence the respondent prayed that an inquiry be conducted by the Controller about the question of rent to be deposited and alternatively that the respondent be allowed to deposit Rs. 280/- for the period from October, 1978 to November, 1979. On 14-12-1979, as per the Orders of the Controller, both the parties appeared before him and on that day the record shows that the respondent was directed by the Controller to deposit the arrears of rent from September, 1978 onwards. At the same time the petitioner was asked to give his say on the respondent's application for inquiry in the dispute regarding the quantum of rents due, which inquiry was fixed by the Controller to be held on 4-2-1980. However, on 4-2-1980, the matter was adjourned to 24-3-1980 and again postponed for want of time to 25-4-1980. Subsequently the inquiry which started on 25-4-1980 went on for several hearing- and by order dated 22-8-1980 She Controller rejected the respondent's contention that the rents had been paid upto September, 1978 and directed him to deposit in the Court the arrears of rents from October, 1977 to July, 1980 within a month from the date the order was served on him. It appears that thereafter the respondent, by application dated 7-10-1980, sought for permission of the Controller to pay the arrears determined by him in two instalments, which application was granted and accordingly the payment was made on 9-10-1980 and 27-10-1980. Thereupon regular proceedings on the petition took place during which both the parties gave evidence after which the Controller by his judgment and order dated 21-11-1981 allowed the application and directed the respondent to hand over vacant possession of the premises to the petitioner within sixty days from the date of the receipt of the order.

12. Shri Coelho Pereira has urged that since the proceedings had been filed by the petitioner on the ground that the tenant had failed to pay the rents for two

years i.e., from the month of October, 1977 to September, 1978 the respondent was required to deposit the arrears of rents claimed by him u/s 22(3) of the Act within thirty days during the pendency of the proceedings so as to avoid eviction irrespective of the fact that he had raised a dispute on the quantum of the said arrears. Shri Coelho Pereira argued that the respondent should not be allowed even to raise a dispute without depositing the arrears sought to be recovered by the landlord. Admittedly the respondent failed to pay the arrears to the landlord or at least to tender or deposit the same before the Controller. On the contrary, even after the dispute was adjudicated by the Controller in favour of the petitioner and the arrears claimed by him were found to be correct the respondent still delayed the payment of such arrears which he had been directed to pay or deposit within thirty days. There is no doubt a very valid point in the submissions of Shri Coelho Pereira. Indeed, by order dated 22-8-1980 the respondent was required to deposit in the Court the arrears of rent, from October, 1977 to July 1980, within a month from the date the order was served on him. The record shows that this order was served on the respondent on 4-9-1980. The respondent was therefore bound to deposit the said amount upto 3-10-1980 which he obviously failed to do. Instead by his application dated 7-10-1980 the respondent belatedly approached the Controller again with a prayer that he should be allowed to make the payment of the arrears in two instalments which application was ultimately granted by the Controller and as such the payment was done, the first instalment on 9-10-1980 and the second on 27-10-1980. But the fact remains that both these instalments were paid or deposited beyond the time stipulated by the order of the Rent Controller thus attracting the legal consequences as provided in sub-section (4) of section 32 of the Act. Being so the Tribunal was not expected to record a finding that this payment of the arrears had been timely done by the respondent in terms of section 22(3) and (4) of the Act as it was erroneously stated by the Tribunal. It seems that the learned Tribunal totally ignored the fact that the said payment had been done by the respondent only after the application filed by him u/s 32 (3) was disposed of by the Controller and that also consequent upon his belated prayer to the said Controller that the amount determined by him should be paid in two instalments, under subsection (4) of section 32 of the said Act. It is, therefore, difficult to accept that the said payments could have been done by the respondent in terms of sub-sections (3) and (4) of section 22 of the Act which, as it was already made clear in the preceding paras, has a completely different field of applicability and does not cover situations wherein the amount of rent was disputed by the tenant and/or the same was ultimately determined by the Controller. Besides the Controller in his order had given a finding on merits by holding that the respondent had not shown sufficient cause to be in default in arrears of rent and this finding was not even unsettled by the Tribunal in its judgment reversing the order of the Controller. A bare reading of the said judgment clearly shows that there is no such finding passed to that effect and the only finding recorded by the Tribunal is that the respondent had complied with the orders of the Controller to deposit the rents wrongly treating the case as

u/s 22(3) and (4) of the Act for the purpose of declaring the proceedings abated consequent upon that payment. The judgment of the Tribunal has further committed a gross mistake in saddling the petitioner with costs since nowhere section 22(3) does so provides in case the tenant makes the deposit of the arrears within time and instead it commands that in such cases costs should be paid always by the tenant himself. This aspect of the case appears to have been also totally overlooked by the Tribunal while passing the impugned order.

13. Further it is seen that the respondent in his application dated 11-12-1979, u/s 32(3), wherein he had raised the dispute about the quantum of rent, had shown his willingness to deposit the arrears of rents corresponding to the period from October, 1978 to November, 1979. Upon this application the Controller on 14-12-1979 directed the respondent to deposit the arrears corresponding to that period. In spite of that the respondent again committed default and failed to comply with the aforesaid order and ultimately arrears were neither deposited nor paid. However the arrears were later on belatedly paid and this also in instalments only after the Controller passed his order, dated 22nd August, 1980, rejecting the dispute raised by the respondent regarding the arrears amount of the rents. Shri Coelho Pereira is therefore right when he contends that the respondent was not entitled to claim the benefit provided by section 22(3) of the Act obviously because whatever payment done was effected after the dispute raised by him u/s 32(3) of the Act was disposed of and therefore, the question of any benefit to be given to him u/s 22(3) could not arise.

14. As we have already held the scope of the provisions of section 22(2)(a) is strictly limited to cases wherein the tenant did not raise any dispute about the amount of the arrears claimed by the landlord and being so the case of the respondent by no stretch of imagination would fit within the purview of the said section 22(2)(a). Further and as per the respondent's own admission the arrears were not paid or deposited within the period of thirty days from the date the respondent was served with the summons of the proceedings, but instead only after the dispute raised by him was finally adjudicated by the Controller. And that also not within the time granted by the Controller but during the extended period allowed to him, at his request, u/s 32(4) of the Act. Similarly the extension of time granted to the respondent to effect the payment of the arrears could also not have been given u/s 22(4) of the Act, as referred to by the Tribunal in its impugned judgment and the reason is that the aforesaid section 22(4), in the view taken by us, is to operate only in case the tenant does not raise any dispute about the quantum of rent. Besides the respondent was required to file an application to the Controller pleading a sufficient cause to remain in default of the payment of arrears. Obviously such application was also not made by him and, on the contrary, the respondent straightaway approached the Controller with the application u/s 32(3) without even caring deposit the amount of arrears claimed by the petitioner or at least the undisputed portion that arrears in respect whereof the said respondent had already expressed his willingness deposit the same before the Controller.

15. This being the position we find ourselves in agreement with Shri Coelho Pereira when he further contends that it was wrong for Shri Usgaoncar to argue that where a dispute is raised by a tenant u/s 32(3) of the Act automatically the time prescribed u/s 22(3) gets extended and thus the tenant does not become liable for eviction for his failure to deposit such the arrears claimed by the landlord until the dispute is adjudicated by the Controller. We have already pointed out above that, even assuming that the provision of section 32 applies cases of eviction filed by a landlord against the tenant on the grounds of non-payment of rent, however, the provision of sub-section (3) to section 22 would always prevail upon the provision of section 32(3) and the circumstance of the tenant having raised the dispute will not dispense him from effecting the deposit of the arrears within time or at least in respect of undisputed portion of the arrears claimed by the landlord if he wanted to avoid his eviction from the tenanted premises.

16. On the other hand, the fact of the Controller having granted to the respondent extension of time to deposit the arrears in instalments, that by itself would not entitle him to claim the benefit of section 22(3) of the Act. Nowhere in the aforesaid provision is said that this benefit should be granted to the tenant subject to any order of the Controller and instead the said provisions seems to rule out the possibility of such deposit being made in instalments. Thus Shri Usgaoncar's submission that the Tribunal interpreted the respondent's application u/s 32(3) as an application u/s 22(3) and (4) and granted him relief by quashing the order of the Controller appears to be totally misplaced. We have already observed, based on valid meaningful interpretation of these two legal provisions, as to how the field of operation of each of them was separate and distinct and that while section 22(2)(a) is applicable when the tenant does not raise any dispute about the quantum of the rent in arrears, however, section 32(3) on the contrary comes into play only when the dispute about the quantum of arrears was raised by the tenant.

17. Thus there could be no question of interpreting the application of the respondent, u/s 32(3), as an application u/s 22(3) and (4) of the Act. It is in this context that we have also rejected another of Shri Usgaoncar's submission that in case the tenant raises a dispute u/s 32(3) the question of his depositing rents within thirty days, u/s 22(3), does not arise and that the said payment can be done only after the dispute adjudicated. We have already held that in such cases when the tenant raises a dispute about the quantum of arrears of rent the deposit should be done at least in respect of the portion of the arrears which is not under dispute. In the instant case it is seen that the respondent, inspite of offering himself to make such deposit or payment and even after he was ordered by the controller to effect the deposit, has totally failed and neglected to pay or deposit the arrears. As such there is no scope for the tenant in such a situation to claim that he is still protected by the benefit of section 22(3) of the Act.

18. Shri Usgaoncar further urged that as far as the registered notice allegedly

sent by the petitioner to him is concerned the said notice was not served on him as the same was never received by the respondent nor any letter was actually delivered to him by the postman. Shri usgaoncar invited our attention to the wording of section 22(2)(a) which stipulates that the period of thirty days referred to therein should be counted from the day of the receipt of or the refusal (underline supplied) of a registered notice served on the tenant by the landlord for such arrears . Shri Usgaoncar pleaded that the record shows that the endorsement mentioned by the postman in the aforesaid letter refers to the fact that the letter was "unclaimed"" which certainly does not amount to a refusal. Shri Usgaoncar vehemently argued that the respondent never received any notice and in his reply he always asserted that he did not refuse to accept any such notice for the simple reason that he had never received any letter from the petitioner for that matter. Shri Usgaoncar tried to make a distinction between the words" unclaimed" and " refused " by saying that in case of an on "unclaimed" letter, the same expression suggests that the postman has never met the concerned person directly as it happens in case of refusal. Shri Usgaoncar stated that in both cases it was required that the postman should depose on the matter so as to prove the alleged refusal or the unwillingness of the person to whom the letter was addressed to accept or to collect the same. Being so, Shri Usgaoncar urged, there was no question of the specific requirement regarding the service of the notice, as provided in section 22(2)(a) of the Act, having been satisfied in this case and as such the consequences of the respondent's failure to comply with the terms of sub-section (3) of section 22 should not also arise.

19. We are unable to accept this line of thinking, though prima facie appealing, and in our considered view the submissions of Shri Usgaoncar with this regard seems to be lacking in substance. We have to see that the endorsement of "unclaimed" on the letter purportedly enclosing the notice prescribed u/s 22(2) (a) was recorded by the postman after being satisfied that the respondent failed to collect the letter inspite of he being aware that it was available for delivery to him. The said letter indicates various dates on which the postman attempted to personally hand it over to the respondent and there is another endorsement showing that the respondent was intimated on 13-8-1979. After this endorsement there are two more endorsements one dated 18-8-1979 and the other dated 20-8-1979, indicating that the respondent was not found even after the attempt made by the postman to personally effect the delivery of the letter. It is only on that day that the letter undelivered and unclaimed by the respondent was returned to the sender. In the circumstances we have no hesitation in believing that the endorsements of the postman are true and genuine and that the same disclose that the letter addressed by the petitioner to the respondent purportedly containing the notice was deliberately avoided to be collected or accepted by the respondent. Hence we are in a position to confidently hold that the expression "unclaimed" endorsed by the postman on the letter amounts to a clear refusal on the part of the respondent to accept the notice.

20. Further, Shri Usgaoncar's contention that for the purpose of accepting the veracity of the endorsements of the Postman it was necessary that he should have deposed before the Court in support of the said endorsements is not also well founded. Admittedly the postman is a public of is a public servant and as such whatever endorsements put by him on the letters are to beamed as truthful and correct. Thus there is always a presumption, although rebuttable, about its intrinsic genuineness. Being so the respondent's charge or allegation on the contrary does not appear to be either reasonable or justified. If the respondent really believes and maintains that such endorsements are false it was for him to prove this fact through any admissible evidence, even summoning the postman, if necessary, for that purpose in order to establish that the letter was never attempted to be delivered to him. Hence this contention of Shri Usgaoncar deserves to be rejected.

21. Shri Coelho Pereira has urged that the respondent should not be entitled to raise the point before this Court because the same was never agitated earlier before the Controller. In fact the respondent only denied having been served with the notice and the point of initial want of notice was never raised by him. Besides the distinction sought to be made by the respondent being "unclaimed" and "refused" is a question dependent on evidence. Further even before the Tribunal this issue was not also brought to the fore because from the Judgment itself it seems that the only issue pressed before she Tribunal was with regard to the petitioner's plea of the respondent being a defaulter in the payment of rents.

22. Shri Usgaoncar submits that the ground was expressly included in the memo of appeal although he concedes that there is no reference to that in the judgment. This admission Shri Usgaoncar is by itself sufficient to suggest that the Tribunal did not deal with that point at the time it delivered the impugned judgment. Therefore. Shri Coelho Pereira is right when he argues that this shows that no other issue was actually raised before the Tribunal because if the matter had been taken by the petitioner he should have certainly asked for an amendment of the Judgment. Reliance was placed by Shri Coelho Pereira in the case of Sheo Prashad Rambhajan v. Kanhiyalal Ramniwas and another, AIR 1953 Ajm 52 , wherein it has been held that when the appellate judgment is silent as to a point raised in the memorandum appeal it should be presumed that it was not argued but abandoned before that Court unless there is an affidavit to the contrary by the Counsel for the appellant. Shri Coelho Pereira contends that no affidavit of the respondent was filed to this effect and hence the plea of Shri Usgaoncar is deemed to be waived. In another decision of Mahabir Mahton and Others Vs. Mt. Sonmati Kuer and Others, , the Court ruled that in a suit for partition when a plea of self-acquisition was rejected by the trial Court and this plea was not pressed again in the first appeal it was not open to the party concerned to raise it again in second appeal.

23. We are indeed inclined to agree with Shri Coelho Pereira in this aspect also inasmuch the record shows that the Controller gave a finding that there was no

sufficient cause for non-payment of rents by the respondent after thoroughly going through the records and therefore if it should not be permissible for the respondent to agitate now the point before this Court when the matter requires evidence by allowing the respondent to raise such plea at this stage. Shri Coelho Pereira is thus justified when he states that the whole proceedings reveal that at no point of time the respondent took up this important aspect which would materially affect the order of the Controller who categorically ruled that the respondent was in arrears of rent on account of his own default in timely paying the rents despite a competent notice served on him under Clause (a) of sub-section (2) of section 22. Being so the objection of Shri Coelho Pereira in this regard appears to be sound and well conceived.

24. It was next submitted by Shri Usgaoncar that the arrears of rents claimed by the petitioner corresponding to the period from October, 1977 to September, 1979 are not correct. The petitioner himself in his written statement filed in the suit instituted by the respondent against me said petitioner for a mandatory injunction clearly admitted the plea of the respondent that the rents had been paid by him upto September, 1978. Thus, Shri Usgaoncar urged, the petitioner was bound by this admission and could not have claimed arrears beyond October, 1978. The Controller has also overlooked this aspect when, inspite of this position having been brought to his notice, he ordered that the arrears from October, 1977 to September 1979 should be deposited in favour of the petitioner. According to Shri Usgaoncar this fact by itself would show non-application of mind on the part of the Controller.

25. Shri Coelho Pereira, however, has joined issue on this point and states that the so called admission purportedly made by the petitioner cannot be considered as a relevant admission in these proceedings so much so the written statement referred to by the respondent was filed by the petitioner in a different suit. Shri Coelho Pereira insisted that this makes a lot of difference specially when we have to bear in mind that the subject matter of the suit were not the arrears of rents but instead a plea made by the respondent for an injunction. Further at no time the respondent confronted the petitioner with this alleged admission in order to enable him to explain in what circumstances he has made such an averment.

26. There is indeed a very valid point in the submissions of Shri Coelho Pereira. The record shows that, even during the course of the evidence when the petitioner appeared before the Controller and stated that the respondent was in arrears of rent from October, 1977 to September, 1979 the said respondent did not even bother to mention to the petitioner that he had differently admitted that the rents had been paid upto September, 1978 or confront him with a copy of his written statement allegedly filed in this respect. The respondent simply contended himself in denying by a mere suggestion that the statement of the petitioner was not true. Similarly when the respondent gave his evidence before the Controller then also he failed to make any reference to this purported admission on the part of the petitioner in the aforesaid written statement.

Against this so called admission the petitioner produced counterfoils of the receipts allegedly issued by him to the respondent in respect of the rents paid upto October, 1977.

27. However this issue does not seem to be relevant any more once the question of the amount of the arrears due was finally adjudicated by the Controller and the respondent ultimately effected its full payment although he did it in two instalments.

28. Further, even assuming that the arrears of rent had not been properly calculated by the Controller the fact remains that, irrespective of the circumstance that the respondent paid to the petitioner rents upto September, 1978, as alleged by him, it is obvious that at the time of the institution of the proceedings against him the respondent was admittedly still in arrears of rents for a period of more than three months which by itself was enough to justify the petitioner's prayer for the respondent's immediate eviction.

29. On the other hand, admittedly, the respondent, inspite of having conceded that the rents were not paid after September, 1978, although claiming that the petitioner's mother refused to accept them, he never cared to send to the petitioner the rents accrued through money order as P" the provisions of the Act. This failure to comply with the legal requirement rules out any possibility of the respondent claiming that the rents became legally due to the petitioner solely account of his own fault. Hence this submission of Shri Usgaoncar cannot be also accepted as devoid of any merit.

30. In the result the petition is to succeed and is hereby allowed with costs for the respondent. The judgment and order dated 7-12-1988 of the Administrative Tribunal is quashed and set aside and the order dated 21-11-1981 of the Rent Controller in Rent Case No. Rent/5/79/R.C restored. Rule made absolute in the above terms.