
(2017) 02 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 585 of 2016

Franciso Noronha

APPELLANT

Vs

Jacinto C. Barreto Miranda

RESPONDENT

Date of Decision : 24-02-2017

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22(2)(a), Section 22(3)
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 — Rule 7, Section 22(3)

Citation : (2017) 1 RCRRent 312

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Shivan Desai, Advocate, for the Petitioner; M.B. Da Costa, Senior Advocate with Advocate Ms. Ankita V. Tari, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Bhadang, J. (Oral) - The challenge in this petition is to the order dated 19/4/2016 (below Exhibit 23) passed by the learned District Judge, Margao, in Rent Appeal No.47/2013/DJ-2. By the impugned order the relief sought by the petitioner in terms of section 22 (3) of the Goa Daman and Diu Buildings (Lease, Rent and Eviction Control Act) (Act, for short) has been refused.

2. The brief facts necessary for the disposal of the petition may be stated thus, That the petitioner is a tenant of the respondent in respect of the premises which are subject matter of dispute.

3. On 24/10/1986, the respondent filed an application for eviction of the petitioner under section 22 (2) (a) of the Rent Control Act. The first summons in the case was issued on 25/11/1986 of which the date of appearance was 22/12/1986. The petitioner claims that he deposited Rs. 7350/- on 14/12/1986 representing rent for 21 months, followed by a deposit of Rs. 700/- on 22/12/1986 for the month of October and November 1986. It is thus contended

that the petitioner had deposited/paid the entire rent from January 1985 to November 1986, entitling him to the benefit of section 22(3) of the Act.

4. It appears that the record of the Rent Control case was not traceable for some time. On 19/2/1988, a second notice was issued to the petitioner where the date of appearance was 25/2/1988. There were two applications filed by the petitioner. One dated 8/9/1988 and another dated 9/6/1989 for dropping the proceedings, as the petitioner had complied with the provisions of section 22(3) of the Act. The earlier application of the year 1988 had remained undecided. On 22/7/1990 the learned Rent Controller dismissed the application dated 9/6/1989 which was not challenged by the petitioner.

5. On 8/9/2003, the learned Rent Controller allowed the application dated 8/9/1988 granting benefit of section 22(3) of the Act to the petitioner. The said order was challenged by the respondent in Eviction Appeal No.20/2007 before the Administrative Tribunal. The Administrative Tribunal by an order dated 8/9/2010 allowed the appeal and dismissed the application dated 8/9/1988 restoring the matter back to the Rent Controller for deciding it on merits.

6. On 30/10/2012, the Rent Controller allowed the main application filed by the respondent on merits directing eviction which is challenged by the petitioner before the Administrative Tribunal. On account of the amendment to the Rent Act the appeal has now been transferred to the learned District Judge where it is pending.

7. On 22/2/2016, the petitioner filed an application before the Appellate Court again seeking benefit of section 22(3) of the Act, which the learned District Judge has dismissed by the impugned order dated 19/4/2016. Hence this petition.

8. I have heard Shri Desai, the learned counsel for the petitioner and Shri Da Costa, the learned Senior Counsel for the respondent. With the assistance of the learned counsel for the parties, I have gone through the record and the impugned orders passed.

9. It is submitted by the learned counsel for the petitioner that the petitioner had cleared all the arrears of rent i.e from January 1985 to November 1986 on receipt of the first summons and this is done within the period as prescribed under Rule 7 of the Goa Buildings (Lease, Rent and Eviction) Control Rules, 1969 (The Rules for short). It is submitted that the record of the case was not traceable for some time and the second summons came to be issued on 19/2/1988. It is submitted that once the petitioner had cleared the arrears, the Rent Controller ought to have granted benefit of section 22(3) of the Act, however, the application dated 8/9/1988 remained pending. It is submitted that if the summons is issued again in the same proceedings it cannot be said that the petitioner was availing the benefit of section 22(3) for the second. The learned counsel has taken exception to the reasoning articulated by the learned District Judge in para 20 onwards. He, therefore submits that the petitioner being

entitled to the benefit of section 22(3) of the Act, the learned District Judge ought to have allowed the application Exhibit 23 filed by the petitioner.

10. On the contrary it is submitted by Shri Da Costa, the learned Senior Counsel for the respondent that the petitioner cannot avail of the benefit of section 22(3) more than once. It is submitted that the petitioner had not challenged the dismissal of the application dated 9/6/1989 by the Rent Controller. It is submitted that although the earlier application dated 8/9/1988 was allowed by the Rent Controller, the said order was set aside by the Administrative Tribunal, directing the Rent Controller to decide the main application on merits. It is submitted that after the main application is decided now, in an appeal challenging the said order, the petitioner cannot seek benefit of section 22(3) of the Rent Act. The learned counsel submitted that Section 22 (3) r/w Rule 7 of the Rules envisage the date of service of the notice and not the date of hearing. It is submitted that the petitioner had not sought determination of the costs so as to avail of the benefit of section 22(3). Reliance in this regard is placed on the decision of this Court in the case *Arti v. Sociadade Verlekar*.

11. The learned Senior Counsel has pointed out that on 14/6/1988 and 1/7/1988, the petitioner only filed applications for adjournment and at that stage also did not seek an order for determination of costs or the benefit of section 22 (3) of the Act. It is submitted that the petitioner has been irregular in the matter of payment of rent which would be apparent from the receipts of the money orders produced before the Administrative Tribunal vide application dated 21/12/2009. It is submitted that the impugned order does not call for any interference.

12. I have carefully considered the rival circumstances and the submissions made. A tenant can avail the benefit of section 22(3) of the Rent Act provided he pays or tenders to the landlord or deposits with the Rent Controller the arrears of rent due up to the date of such payment tender or deposit, together with the costs of the application. Such payment, tender or deposit has to be made within 30 days of the service of the summons of the proceedings on him. The proviso to sub section 3 of section 22 would make it explicit that the tenant is not entitled to take the benefit of this provision twice.

13. In the present case although it is claimed on behalf of the petitioners that the first summons was issued on 25/11/1986 in pursuance of which the petitioner had deposited the entire arrears from January 1985 to November 1986, the learned District Judge has found that although there was a notice/summons dated 25/11/1986 found in the record, there was no material to show that the said summons was sent for service or it was duly served on the petitioner. The learned District Judge has also observed that there was no categorical statement made by the petitioner, that he had received the said summons. For this reason the learned District Judge has refused to uphold the contention on behalf of the petitioner that the petitioner had paid the arrears rent within 30 days of the service of summons on him. Be that as it may, the first application dated

9/6/1989 was dismissed by the Rent Controller on 27/7/1990 which was not challenged by the petitioner. The second application dated 8/9/1988 stood dismissed when the eviction appeal was allowed by the learned Administrative Tribunal on 8/9/2010. Furthermore, there is nothing on record that the petitioner had sought determination of the costs and shown willingness to pay the same. This Court in the case of *Arti (supra)* placing reliance on the earlier decision in the case of *Yeshwant Vinayak Naik v. Casimiro A. J. A Ribeiro & Others* in Writ Petition No.52/B of 1982 decided on 5/10/1984 has held that under section 22 (3) of the Act, apart from deposit of the arrears rent the tenant has also to deposit the costs. It has been held that though the costs are not provide for or statutorily quantified, the tenant has to ask for determination of the costs. The following observations in para 7 of the case of *Yeshwant Naik (supra)* can be reproduced as under :

"7. It is no doubt true that there is no provision in the Act postulating what is the amount of the cost of the application for eviction. Therefore, it would appear that Sub-section (3) has cast an impossible burden on the tenant to avail himself of the benefit provided therein. It is, therefore, necessary to interpret the said provision of law in a manner which gives some meaning and proper and workable extent to the requirement to deposit the cost of the application for eviction along with the arrears of rent. Section 48 of the Act provides that subject to such conditions and limitations, if any as may be prescribed, the cost of and incident to all proceedings under the Act before any original, appellate or revisional authority under the Act, shall be in the discretion of the said authority, which shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purpose. Therefore, it is clear that the authorities under the Act, particularly the Rent Controller, are given powers to fix at the discretion the amount of cost of any proceedings under the Act. Thus, since Sub-section (3) of Section 22 requires the tenant to deposit the arrears of rent along with the costs of the application and since there is no method for the tenant to calculate such cost of application, the only way to consolidate and understand the section is that the tenant who wants to avail of the benefit given to him by the said provision of law has to along with the application to deposit the arrears of rent, request the Rent Controller to fix the cost of the application. If the Rent Controller, in spite of that, does not determine the cost of the application, then an impossibility will arise for the tenant and by depositing alone the arrears of rent, the benefit of Sub-section (3) may be given to him. However, if the tenant does not at all approach the Rent Controller with a prayer for the fixation of the cost of the application and merely seeks to deposit the arrears of rent, then manifestly the benefit of Sub-section (3) of Section 22 of the Act does not accrue to him."

(Emphasis supplied)

It has not been shown that the petitioner has either sought fixing of costs or shown willingness to pay the same.

14. In the present case the application filed by the respondent under section 22 (2) (a) of the Act has been allowed on merits which is subject matter of challenge before the learned District Judge. Considering the overall circumstances, I do not find that the impugned order dismissing the application Exhibit 23 suffers from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed with no order as to costs.