

(2013) 10 BOM CK 0237
In the Bombay High Court
Case No : Writ Petition No. 723 of 2012

Kanchan Ramdas Morascar (Smt.)	Vs	APPELLANT
Armando Joao Benedito Mascarenhas (Dr.) and Another		RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 6 ABR 689 : (2014) 1 ALLMR 530 : (2014) 1 BomCR 235

Hon'ble Judges : Savant R.M., J

Bench : Single Bench

Advocate : Sudin Usgaonkar and Ms. A. Shirodkar, for the Appellant; J.E. Coelho Pereira and S. Karpe, for the Respondent

Judgement

Savant R.M., J.—Rule. With the consent of the learned Counsel for the parties, made returnable forthwith and heard. The writ jurisdiction of this Court is invoked against the judgment and order dated 22/8/2012 passed by the Administrative Tribunal, Goa by which order, the application dated 5/1/2012 filed by the petitioner herein u/s 32(1) and the application filed by the respondents u/s 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 ("the Rent Act" for short) came to be disposed of inasmuch as the application filed by the respondents came to be allowed and the proceedings filed u/s 22(2)(f) of the Rent Act came to be stopped and the petitioner herein was directed to vacate the suit premises within two months from the date of the order and put the respondents in possession of the said premises.

2. The facts necessary to be cited for adjudication of the above petition can in brief be stated thus:

The petitioner is the tenant in respect of the premises in question which is one compartment on the ground floor of the building described under No. 2380 of Book B 28(old) and inscribed in the Taluka Revenue Office under No. 709. The lease granted was for the sale of shoes. The original lessee Xencora Narain Moraskar gave up his rights under the lease in favour of his son Ramdas Shankar

Moraskar some time in the year 1970. The said Ramdas, thereafter, was carrying on the business of making and selling of shoes in the suit premises. The said Ramdas expired in the year 1980 and, thereafter, the petitioner herein continued the said business in the suit premises which business is at present being conducted by the petitioner.

3. The respondents herein filed an application on 19/7/1988 for the eviction of the petitioner u/s 22(2)(f) of the Rent Act. Since the petitioner did not deposit the rent, the respondents filed an application u/s 32(4) of the Rent Act alleging non-deposit of the rent. On the filing of the said application u/s 32(4) of the Rent Act by the respondents, the petitioner filed an application dated 17/3/1992 for deposit of the rent for the period from February 1982 to February, 1992 at the rate of Rs. 35/- per month and totally amounting to Rs. 4,325/-. The said application filed by the petitioner came to be rejected by the Rent Controller by his order dated 28/4/1993. It appears that thereafter, on 26/2/1997, the respondents filed an application for stoppage of the proceedings u/s 32(4) of the Rent Act. The petitioner filed an application for deposit of the rent and relied upon the judgment of a learned Single Judge of this Court reported in 1995 (1) G.L.T. 117 in the matter of (Shamsundar Kaka Talkar Vs. Rent Controller). The application filed by the petitioner for deposit of the rent came to be allowed by the Rent Controller by his order dated 9/9/1997 by holding that the petitioner is allowed to deposit the rent and the Rent Controller relied upon the judgment in the case of Shamsundar Kaka Talkar (supra) and directed the petitioner to deposit arrears of rent from February, 1982 to August 1997 within 15 days from the date of the order.

4. Aggrieved by the said order dated 9/9/1997, the respondents filed an appeal before the Administrative Tribunal being Eviction Appeal No. 137/1997. It appears that the petitioner deposited the rent in question till February, 2003. The matter before the Administrative Tribunal, thereafter, proceeded from time to time. When the matter was listed before the Administrative Tribunal on 26/12/2011, the Advocate for the respondents drew the attention to the fact that the petitioner has not deposited the rent in the Tribunal since February, 2003 and that he would be filing an application u/s 32(4) of the Rent Act for stoppage of the proceedings in view of the default committed by the petitioner. It appears that on the next date of hearing i.e. on 5/1/2012, the petitioner filed an application for deposit of rent. It was the case of the petitioner in the said application that after the order dated 9/9/1997 was passed, she was regular in paying the rent and later on, due to financial constraints and dispute with her son which started in December, 2002 which dispute went on for about 7 to 8 years, she could not deposit the rent. It was further her case that she is a widow and has no personal source of income. It was further her case in the said application that the dispute has been settled between she and her son and that she, therefore, be allowed to deposit the rent for the preceding eight years from February, 2003 to December, 2011.

On the application filed by the petitioner, the respondents filed an application u/s 32(4) of the Rent Act for stoppage of the proceedings. It was the case of the respondents that by the order dated 9/9/1997, though the Rent Controller had directed the petitioner to deposit the arrears of rent, he had also directed her to be punctual in respect of the same. It was the case of the respondents that in spite of the said direction, the petitioner had repeated her defaults and has not deposited the rent for the period of 107 months from February, 2003 to December, 2011. It was the case of the respondents that there was no substance in the case of the petitioner as pleaded in the said application filed u/s 32(1) of the Rent Act and that the petitioner had failed to show sufficient cause as contemplated u/s 32(4) of the Rent Act. On behalf of the respondents, reliance was placed on the judgments of the learned Single Judges of this Court as well as Division Benches of this Court. The said judgments are: the judgment reported in *Kisanrai V. Gaonkar Vs. Rajendra N. Dharwadkar and Others*, ; judgment reported in *Shri Datta Anant Ghadi Vs. Guilhermina Silveria and others*, , and the judgment reported in *Shri Vante Bicrem Gaunso Vs. The Administrative Tribunal, Goa and others*, .

The Administrative Tribunal considered the said application filed u/s 32(4) by the respondents and by the impugned order dated 22/8/2012 has disposed of the same inasmuch as the Administrative Tribunal has allowed the said application and has stopped the proceedings in question and directed the petitioner to hand over the vacant possession of the premises in question to the respondents. The gist of the reasoning of the Tribunal revolves around whether the petitioner has made out sufficient cause for non-stoppage of the proceedings. The Tribunal, inter alia, held that though the petitioner, who was the respondent before the Tribunal, was well aware of the fact that she should deposit the rent, the petitioner has failed to deposit the said rent. The Tribunal also adverted to the fact that non-deposit of the rent was also at the trial stage and despite the same, the petitioner had stopped depositing the rent from February, 2003 to December 2011. The Tribunal also adverted to the earlier stand taken by the petitioner before the Rent Controller wherein in the written statement, she had stated that she has paid all the arrears. The Tribunal has also sought to advert to the fact that pursuant to the order dated 9/9/1997, the deposit made by the petitioner was irregular and deposit was made for the period of more than one month at one time. The Tribunal held that the respondents has not advanced any reason for the said irregularity. The Tribunal in the context of the case of the petitioner that she had differences with her son, which differences arose in December, 2002 and had continued for 7 to 8 years, observed that though the petitioner had pleaded the said case, the affidavit of the son was not filed. The Tribunal held that the conduct of the business by the son in the shop premises is the internal arrangement between the petitioner and her son and the same would have no relevance insofar as the proceedings u/s 32(4) of the Rent Act is concerned. The Tribunal, however, observed that the petitioner had not taken various pleas against the charge of default and, therefore, the facts in the case of Vante

Bicrem (supra) differ from the facts of the present case. The Tribunal, however, held that the facts in the instant case would lie on the back of the petitioner on account of which, according to the Tribunal, she has not shown sufficient cause for not stopping the proceedings and, therefore, the proceedings would have to be stopped by having recourse to section 32(4) of the Rent Act. The Tribunal, accordingly, allowed the application filed by the respondents and directed stoppage of the proceedings and further directed the petitioner to vacate the suit premises within two months from the date of the order and put the respondents in possession of the same. As indicated above, it is the said order dated 22/8/2012 passed by the Tribunal, which is the subject-matter of the above writ petition.

5. Heard the learned Counsel appearing on behalf of the parties i.e. Shri Sudin Usgaonkar for the petitioner and the learned Senior Counsel Shri J.E. Coelho Pereira for the respondents.

Submissions on behalf of the petitioner by the learned Counsel Shri Usgaonkar.

i) That the Tribunal has not considered the application made by the petitioner for deposit of rent which application, inter alia, contains the reasons for non-deposit of the rent from February, 2003 to December, 2011 in its proper perspective.

ii) That mere non-deposit of the rent cannot be the sole criteria for stoppage of the proceedings u/s 32(4) of the Rent Act, as the Tribunal is required to consider whether the default was for a short period or long period, whether the default is willful or unintentional, whether the default is stray or persistent, whether the payment was made at earliest opportunity or after cantankerous contest, whether the default was bona fide or to harass the landlord. The said tests have been laid down by a Division Bench of this Court in the case of (Rock Antonio Judas Tadeau Caetano Ribeiro Vs. Agnelo Cassiano Neves e Souza and 4 others), reported in 1989 (2) G.L.T. 313.

iii) That the fact that the petitioner has shown her bona fides immediately after it was brought to her notice on 26/12/2011 that rent has not been paid from February, 2003 to December, 2011 to the respondents by filing an application u/s 32(1) of the Rent Act.

iv) That the Tribunal seems to have laid undue emphasis on the fact that the son of the petitioner had not filed his affidavit to corroborate the case of the petitioner that there were differences between her and her son which differences arose in December, 2002 and on account of which differences, there was default in deposit of the rent. The Tribunal, in the absence of the said fact being disputed by the respondents by filing any affidavit, ought to have accepted the said case of the petitioner. The learned Counsel relied upon the judgment of a learned Single Judge of the Allahabad High Court reported in Juggi Lal Kamla Pat Vs. Ram Janki Gupta and Another, .

v) That the Tribunal had erred in considering the facts antecedent to the order

dated 9/9/1997 passed by the Rent Controller, the said facts would have no relevance insofar as the challenge to the said order dated 9/9/1997 is concerned whereby the application filed by the petitioner for deposit of the rent came to be allowed by the Rent Controller which order is in appeal before the Administrative Tribunal.

Submissions on behalf of the respondents by the learned Senior Counsel Shri Coelho Pereira.

i) That there is a statutory obligation cast on the tenant to make the deposit of rent pendente lite. The learned Counsel placed reliance upon section 18 and Rule 7 of the Rules which postulate the obligation and the manner in which the deposit has to be made. The petitioner, having not made the deposit, though obliged to do so in terms of the order dated 9/9/1997, has not complied with the said order and, therefore, no fault could be found with the impugned order passed by the Tribunal directing stoppage of the proceedings.

ii) That the default in question is for a period of 107 months i.e. from February, 2003 to December, 2011, however, the application for deposit only came to be filed when he said fact was brought to the notice of the Tribunal by the respondents on 26/12/2011 and, therefore, the application is not bona fide.

iii) That the default in question being for a period of 107 months and the petitioner not being able to show any justifiable reason for the said default which is contemplated u/s 32(4) of the Rent Act, the Tribunal was right in stopping the proceedings.

iv) The learned Senior Counsel sought to rely upon the judgment of the Division Bench in the case of Vante Bicrem (supra), wherein the Tribunal had not accepted the reasons for the default of about four years in deposit of the rent which order of the Tribunal was confirmed by this Court.

v) That the mandate of section 32(4) of the Rent Act is clear inasmuch as if the tenant is not able to show sufficient cause to the contrary, then, the order for stoppage of the proceedings would have to follow. In support of said submission, the learned Senior Counsel relied upon the judgment of the Division Bench reported in Shri Datta Anant Ghadi Vs. Guilhermina Silveria and others, wherein the Division Bench has held that the judgment rendered in Shamsundar Kaka Talkar (supra) is per incuriam. The learned Senior Counsel also relied upon the judgment of a Division Bench of this Court reported in Shri Vante Bicrem Gaunso Vs. The Administrative Tribunal, Goa and others, .

6. Having heard the learned Counsel for the parties, I have given my anxious consideration to the rival contentions.

7. In the context of the dispute which arises in the present petition, it would be apposite to refer to section 32 of the Rent Act. The same is reproduced herein under for ready reference:

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.

8. The said section has been a matter of judicial interpretation in a catena of decisions of this Court, some of which have been cited on behalf of the parties in the instant petition. Insofar as the decision in the case of Datta Anand Ghadi (supra) is concerned, the judgment of the Division Bench of this Court was rendered on 28/10/1999. The points referred to the Division Bench were as follows:

(i) Whether the decision rendered in the case of Shamsunder Kaka Talkar since deceased through his legal heirs Vs. Rent Controller and Others, requires reconsideration?

(ii) If so, is it justifiable to allow the proceedings against the tenants for eviction abruptly be pushed away to a flash point, if at all tenants commit a default in making or depositing the rents pendente lite, continuously for three months and to allow the landlord to walk away with the bonanza, stopping the proceedings? Does such a situation envisaged under the scheme of the Act?

9. The said reference arose in view of the judgment rendered by a learned Single Judge of this Court in the case of Shamsunder Kaka Talkar (supra). The learned Single Judge had held in the said case that the order passed u/s 32(4) of the

Rent Act is only an interim order, when invoked against the tenants which partakes finally of the original proceedings without proper adjudication and that the provisions being in terrorem with the intention only to check and correct the contumacious conduct on the part of the tenant who default persistently in making payment to the landlord during the pendency of the proceedings. It has further been held that such a tenant even after the authority finds him u/s 32(4) to be in default, an opportunity should be given to the tenant to pay or deposit arrears of rent before an order of eviction u/s 32(4) of the said Act is passed. The learned Single Judge further held that if such an opportunity is not given, then there is likelihood of the landlords abusing the provision of section 32(4) of the said Act.

It is probably in the said context that the issues for reference to the Division Bench were framed. The Division Bench, having regard to the conspectus of the judgments cited before it wherein section 32(4) of the Rent Act was in contention, held that the provisions of section 32 of the said Act are applicable in each and every proceeding irrespective of the ground on which the eviction of the tenant is sought for. The Division Bench held that it also applies to all stages in a proceeding i.e. at the trial stage as well as appellate and revisional stages. The Division Bench thereafter in Datta Ghadi's case (supra) has concluded that this Court in various decisions referred to in the judgment has interpreted section 32(4) taking into consideration all the other provisions of law and especially section 22(3) and 22(4) and the law laid down in the said decisions can be summarized as under:

1. Section 32 of the said Act prescribes a precondition 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. Section 32(4) operates in all cases of eviction, whatever may be the ground of eviction, but section 22(3) and 22(4) operate only in cases where eviction is sought on the ground of non-payment of rent u/s 22(1)(a) of the said Act.
5. The right to receive rent during pendency of proceedings is a statutory right u/s 32(4) read with section 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 u/s 32 of the said Act.

8. It is not mandatory for the Rent Controller acting u/s 32 of the said Act to stop the proceedings and to order the tenant to deliver possession of the premises to the landlord, 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.

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 u/s 22(4) of the said Act is against default to pay, tender or deposit rent, where as the sufficient cause to be shown u/s 2(4) of the Act 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 u/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.

10. The Division Bench in Datta Ghadi's case (supra), has also referred to a Division Bench judgment of this Court in the case of Rock Antonio Judas Tadeu Caetano Ribeiro (supra). Paragraph 16 which has been extracted by the Division Bench in Datta Ghadi's case (supra), is also relevant in the context of the present petition and the relevant excerpt of the said paragraph is reproduced here-in-under:

In our view, if eviction of a tenant can be sought u/s 22 only after giving such opportunity to pay arrears of rent, it could not have been the intention of the legislature that for any and every default, however unintentional it may be to vest the landlord with an absolute and indefensible right to seek eviction of the tenant and deny to the Rent Controller and the other Authorities under the Act the jurisdiction to consider whether there was any reasonable cause or not for such default. Not only having regard to the language of section 32 and in particular sub-section (4) of section 32, but also having regard to the scheme of the Act, it must be held that the power vested in the Rent Controller and other authorities to stop proceedings and direct the tenant to put the landlord in possession of the building is directory and not mandatory. Some of the factors which would be relevant for exercising this power, would be whether the default is for a short period or long period, whether the default is willful or unintentional, whether the default is stray or persistent, whether payment was made at the earliest opportunity or after cantankerous contest, whether the default was bona fide or to harass the landlord; in short, what has to be found is whether in the

facts and circumstances of the case, there was reasonable cause for non-payment or deposit of rent within such time as is prescribed. In our view, the provision contained in section 32(1) is intended to secure payment on pain of the tenant being precluded from contesting the proceedings and on being required to put the landlord in possession: it is not intended to serve as an order of eviction u/s 22. Section 32(4) vests a discretion in the authorities constituted under the Act to make an appropriate order, taking into account all the facts and circumstances of the case. It is significant to note that the Act does not specifically vest any power in the authorities to dismiss or allow the main petition for eviction; it only empowers them to stop the proceedings. No doubt, this is a provision to enforce payment of rent regularly during the pendency of the proceedings and to deny opportunity to the defaulting tenant to resist the proceedings for eviction. But keeping in view the fact that this provision is a part of a beneficial legislation and considering it in the light of the scheme of the Act, we are unable to hold that the Legislature intended to make it mandatory for the Court to put the landlord in possession no sooner than the tenant committed default wholly ignoring the circumstances in which it occurred. This Act being a beneficial legislation, an interpretation that advances the object of the Act compels us to take the view that in case of default in the payments or deposit of rent pendente lite, the Authorities constituted under the Act are not denied the discretion to make appropriate orders having regard to the fact and circumstances of the case. Section 32(4) is not mandatory but is directory.

(emphasis supplied)

11. It would also be necessary to refer to the judgment of the learned Single Judge of this Court reported in *Satyavijay Anna Tandel Vs. Administrative Tribunal of Goa, Daman and Diu*, . In the said judgment a learned Single Judge of this Court has held that section 32(1) must be resorted to sparingly. It is a provision applicable in *terrorem*. It is only to check and correct the contumacious conduct on the part of the tenants. The said case was a case in which there was delay of about 9 days in depositing the rent by the tenant which delay was not condoned by the Rent Controller who had directed the stoppage of proceedings. This Court set aside the orders passed by the Rent Controller and permitted the tenant to deposit the rent.

12. It is in the context of the interpretation of section 32(4) of the Rent Act as enunciated by the judgments of this Court that the matter was required to be adjudicated upon by the Tribunal. Since the *sine qua non* for passing of an order of stoppage of proceedings is the default committed by the tenant in depositing the rent pendente lite and since section 32(4) postulates that the said proceedings have to be stopped unless the tenant is able to prove to the contrary. It would be necessary at the cost of repetition to refer to the case of the petitioner in the application filed u/s 32(1) which is dated 5/1/2012. In the said application, the petitioner has pleaded that though during the pendency of the proceedings, she was regularly paying the rent in respect of the suit

premises, however, later on due to financial constraints which the petitioner had to go through due to family dispute, the petitioner could not make the payment of rent towards the suit premises. It has further been averred that she is a widow and has one son namely Shekhar Moraskar. It has further been averred that towards the end of December, 2002 there arose differences between she and her son which differences lasted for about 7 to 8 years. It is further her case that during such period, she was not properly looked after by the said son and as such, she had to face many difficulties including financial difficulty. It is her case that since the suit shop was run by her son, she had no personal source of income and at a times had to borrow money from well wishers. It has further been averred that the differences between she and her son are now resolved, the son has settled down in life and is married and staying along with his wife, with the petitioner and that both of them i.e. the son and his wife are looking after her. It has been lastly averred that due to the reasons, which have been mentioned in the said application that the petitioner lost track of the proceedings which ultimately resulted in not making regular payment of rent towards the suit premises. It is required to be noted that the said application is on affidavit. It is pertinent to note that the respondents filed a reply to the said application. The case set out by the petitioner in her application has not been dealt with specifically and the reply, as can be seen, contains legal submissions. It has been stated that the petitioner has failed to establish any sufficient cause for condoning the delay. It is lastly contended that prejudice and loss will be caused to the respondents if the application is allowed and valuable right accrued to the respondents will be taken away.

13. The Tribunal in terms of the law laid down by this Court was, therefore, required to adjudicate upon the application filed by the petitioner u/s 32(1) and the application filed by the respondents u/s 32(4) of the Rent Act on the touchstone of the tests laid down by the Division Bench in the case of *Rock Antonio Judas Tadeau Caetano Ribeiro* (supra). The essence of the tests is whether the conduct of the petitioner is contumacious, whether payment is made after cantankerous contest and whether the conduct is such as to cause harassment to the respondents/landlords. The Tribunal, as can be seen from the its impugned judgment and order, seems to have laid much emphasis on the fact that the son of the petitioner has not filed an affidavit to corroborate the case of the petitioner. The Tribunal failed to appreciate the facts stated in the application which were not controverted by the respondents except making bald denials. The efficacy of the said statements, therefore, ought to have been taken into consideration by the Tribunal in the said context. However, the Tribunal seems to have adversely drawn conclusion against the petitioner by commenting that the dispute between the petitioner and her son is not relevant for consideration as to whether the petitioner had shown sufficient cause. The Tribunal, as can be seen, has considered the aspect of the payment of rent by the petitioner in installments i.e. payment for 3 to 4 months together at one time in the past. This, the Tribunal, has termed as irregular payment of rent. The Tribunal ought to

have applied the yardsticks which have been laid down by this Court in numerous judgments and thereafter, come to a conclusion as to whether the conduct of the petitioner was contumacious or cantankerous and was such as to cause harassment to the respondent Landlord. The Tribunal, though recorded a finding that the judgment in Vante Bicrem's case (supra) is not applicable as the petitioner had not taken various pleas against the charge of default, thereafter held against the petitioner. The Tribunal ought to have taken into consideration the fact that the rent was a small amount of Rs. 35/- and the premises in question were also a small premises wherein the son of the petitioner is now carrying business of repairing and selling shoes. The said fact, in my view, was also a relevant fact, which the Tribunal ought to have taken into consideration whilst adjudicating upon the applications filed by the petitioner and the respondent. However, the same seems to have not been taken into consideration. The Tribunal ought to have approached the matter with some circumspection as the provisions of section 32(4) of the Rent Act are said to be in terrorem. The Tribunal also ought to have taken into consideration that a Division Bench of this Court has held the said provision to be directory and not mandatory. The Tribunal seems to have approached the matter on the basis of that there was a default of eight years and, therefore, the proceedings were required to be stopped. This, in my view, was an erroneous approach of the Tribunal in the teeth of the settled principles/guidelines, which have been laid down in numerous judgments of this Court. The Tribunal has taken into consideration the facts, which did not have relevance insofar as the application u/s 32(4) of the Rent Act is concerned but may have relevance insofar as the main appeal is concerned.

14. For the reasons aforesaid, the impugned order is required to be quashed and set aside and the matter is required to be relegated back to the Tribunal for a de novo consideration. Hence, the following directions are issued:

(i) The impugned order dated 22/8/2012 passed by the Administrative Tribunal is quashed and set aside and the matter is relegated back to the Tribunal for de novo consideration of the appeal in terms of the observations made hereinabove.

(ii) On remand, the Tribunal to hear and decide the appeal expeditiously and by 28/2/2014.

(iii) Needless to say that the Tribunal would decide the appeal on its own merits and in accordance with law, uninfluenced by the observations made in the instant order.

Rule is, accordingly, made absolute in the aforesaid terms with parties to bear their respective costs of the petition.