

(2000) 09 BOM CK 0086
In the Bombay High Court
Case No : Writ Petition No. 172 of 1990

Kashinath Narayan Nachinolkar and Another	APPELLANT
Vs	
M. Lily Dias (Smt.) and Others	RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

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

Citation : (2001) 2 BomCR 250

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : S.G. Dessai, A. and S.D. Padiyar, for the Appellant; R.G. Ramani, for the respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—Heard Counsel for the petitioners and the respondent No. 1. The petitioners are tenants who suffer from an order of eviction passed by the Rent Controller, South Goa, Margao in Case No. Bldg. 159/1979 from two rooms of the residential house situated in the property known as "Gorbat" bearing Matriz No. 166 and House No. 78 of Ponda Municipality pursuant to the order passed u/s 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called as "the Act"). The respondent No. 1 filed the aforesaid case u/s 22 of the Act on the ground of arrears of rent and change of user. According to him the rent was at the rate of Rs. 40/- per month and the petitioners were in arrears of rent totalling to Rs. 660/-. With this allegation the respondent No. 1 landlady filed an application for eviction u/s 22(2)(a) of the Act. On 6th February, 1980 the petitioners tenants made an application stating that the rate of rent was Rs. 20/- per month and the arrears due was only Rs. 340/- and tendered that amount with the application saying that they were making the deposit without prejudice to their rights. It is true as observed by the Court below that there is no specific prayer that the dispute as to the rate of rent has to be decided strictly in

accordance with section 32(3) of the Act. The respondent No. 1 landlady subsequently filed an application u/s 32(4) on 25th August, 1980 and prayed that the petitioners tenants failed to deposit the arrears of rent within one month of the receipt of notice and, therefore, in terms of section 32(4) an order may be passed for eviction of the petitioners tenants. The Rent Controller found that the petitioners tenants failed to deposit the amount and, therefore, the petitioners were ordered to be evicted in the light of section 32(4) of the Act. The said order was confirmed in appeal by the Administrative Tribunal. These two orders are under challenge in this writ petition.

2. The learned Senior Counsel Mr. Surendra Dessai submits that the petitioners' application made on 6th February, 1980 ought to have been considered as one raising dispute regarding the rate of rent u/s 32(3) and that without deciding that dispute the lower Court was wrong in entertaining the application u/s 32(4). The learned Counsel for the respondent No. 1. Mr. Ramani, however, contested this contention and supports the order impugned. He strenuously argued that at any stretch of imagination the application made by the petitioners on 6th February, 1980 cannot be taken as an application to dispute the rate of rent. It was filed only for depositing the rent at the rate of Rs. 20/-. In fact the lower Court also has not considered the said application as containing a dispute regarding the rate of rent. This is where, according to me, the lower Court committed an error. The lower Court did not take an overall view of the matter. When the main application filed by the applicant/respondent No. 1 claims that the original rate of rent is at Rs. 40/- and the application made by the petitioners is depositing the rent at the rate of Rs. 20/- contending that that was contractual rate of rent, definitely, the lower Court ought to have found that a dispute triggered from the pleadings and other circumstances. The Court should have proceeded to resolve the dispute first. On a plain reading of section 32(3) and (4) it is amply clear that when a tenant within the stipulated time disputes the rate of rent or even the quantum of rent as claimed by the landlord in an application, it is incumbent upon the Court below to proceed first to decide that dispute before entertaining any other application of the landlord u/s 32(4) of the Act. The phrase occurring in section 32(4) "as aforesaid" is amply clear that section 32(4) is subjected to the condition laid down in section 32(1), (2) and (3).

3. The learned Counsel for the respondent No. 1 Mr. Ramani, however, contended that the lower courts were right in entertaining an application u/s 32(4) because the application filed by the petitioners on 6th February, 1980 does not contain a prayer to resolve the dispute. Though Prima facie that argument would be found to be attractive, but as I have observed earlier, the courts will have to take into consideration an overall view of the matter. It goes without saying that the application of the petitioners tenants is only an interlocutory application. That application could be considered only on the background of the original application. As I pointed out earlier one cannot dispute that in the original application the landlady has claimed the rate of rent as Rs. 40/- whereas the tenants have deposited the amount asserting that the rate of rent is Rs. 20/- and

deposited the arrears of rent totalling to Rs. 340/-. In view of this, the finding of the courts below cannot be sustained. The lower courts have committed a grave miscarriage of justice without deciding the dispute raised by the tenants u/s 32(3) and proceeding to decide the application u/s 32(4) of the landlady respondent No. 1.

4. The writ petition is, therefore, allowed. Rule is made absolute in the above terms. In the circumstances, no order as to costs.