

(2012) 02 BOM CK 0238
In the Bombay High Court
Case No : Writ Petition No. 647 of 2011

Mr. Kamaludin Sumani

APPELLANT

Vs

Manuel Barreto Xavier and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22(1), 22(2), 32(4)

Citation : (2012) 4 ALLMR 256

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : P.A. Kamat, for the Appellant; I. Agha, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—Rule.

2. Respondents waive notice. By Consent Rule made returnable forthwith.

3. By this Writ Petition under Articles 226 and 227 of Constitution of India, the petitioner challenges the order passed by the Administrative Tribunal dated 17.8.2011 in Eviction application No. 21/2010 and that of the Deputy Collector and Rent Controller, District Margao in case No. BLDG/29/RC/2005 dated 24.9.2007.

4. The applicants before the Rent Controller in eviction case are the respondents before this Court. They have been duly served.

5. It is their case that the petitioner is their tenant and is liable to be evicted on the ground that he has failed to pay agreed rent in respect of said premises. Further his eviction was also sought on the ground that premises are closed and unoccupied.

6. The Deputy Collector and Rent Controller proceeded ex-parte and held that

both these grounds are proved by the respondents. The Order of the Rent Controller to the extent relevant, reads thus

Notices were issued to both the respondents by Reg. A.D. Respondent No. 2 has been duly served and notice issued to the respondent No. 1 came back unserved with the postal Authority's remark, "Party left return to sender". Hence a fresh notice was issued to the respondent No. 1, to serve him by substitute service by affixing the notice on his last known address. However, the respondent No. 1 failed to appear before this Court and hence the matter proceeded ex-parte against the respondent No. 1.

The applicant No. 1 who is also a power of attorney holder for applicant's No. 2 to 6, filed his affidavit-in-evidence and produced documents like attested copies of Power of Attorney, certified copy of deed of lease dated 1.8.1984, a copy of the notice sent to the respondent No. 1, through the applicant's advocate which was returned by the postal authority with the remark "Left Return to Sender", in support of his case.

The undersigned carefully perused the file and the documents/evidence on record. In the present case, respondent No. 1 failed to appear and contest the proceedings and hence the matter proceeded ex-parte against him. According to the applicants, the respondent No. 2, has been made party in the case by the applicants as they were informed that respondent No. 2, is acting as a caretaker of the assets of the respondent No. 1 in Goa. The respondent No. 2 appeared before this Court on receipt of notice, through his advocate but failed to file any written statement in the matter and remained absent for the subsequent hearings and hence the Court passed order to proceed ex-parte against the respondent No. 2 also.

Now, coming to the case of the applicants, it is seen that the applicants have established the landlord tenant relationship between them and the respondent No. 1 vide their Deed of lease dated 1.8.1984 executed between them and the respondent No. 1 in the present case. Thus it has come on record that the respondent No. 1 is the tenant of the applicants. The grounds of eviction sought by the applicants have totally gone unchallenged. The applicants have averred that the respondent No. 1 has failed to pay the rent of suit premises since the year 2004 and have further averred that the respondent has ceased to occupy the suit premises since last over one year and the premises is kept closed. The applicants have also filed a application u/s 32(4) of the Rent Control Act which has also not been contested by the respondent and has gone unchallenged. Since the respondents chose not to contest the proceedings, the entire case of the applicants have gone unchallenged and in view of the same, the undersigned has no alternative but to accept the contentions of the applicants.

As such, considering the circumstances of the case, the undersigned has no hesitation in granting the relief claimed by the applicants.

7. This said order of the Deputy Collector and Rent Controller, Margao Goa, was

challenged by way of an Appeal before the Administrative Tribunal and the Administrative Tribunal on hearing both sides agreed with the Deputy Collector and Rent Controller.

8. Therefore, both the orders are challenged in this Writ Petition by Writ Petitioner/tenant. Mr. Kamat appearing on behalf of the petitioner contended that the proceedings before the Deputy Collector and Rent Controller were ex-parte. Assuming that the Deputy Collector and Rent Controller could have proceeded ex-parte, yet, both grounds of eviction have not been proved by the respondents/original applicants. There are no particulars of alleged default in payment of rent, when it falls due, when it was demanded and whether the demand was in writing and duly received by the petitioner/tenant. Even the eviction on the ground that the petitioner has kept the premises closed and unoccupied is not pleaded in the eviction application as required by law, but it is stated that the premises are not occupied but closed for more than one year from the date of filing of the application. Mr. Kamat, therefore, urged that for both grounds the statutory ingredients for eviction have not been proved and satisfied. In such circumstances, order evicting the applicant is clearly perverse and should have been interfered with by the Tribunal. Refusal of the Tribunal to interfere has vitiated both the orders and they should be set aside.

9. Learned Advocate appearing on behalf of the respondents duly supported the conclusion of the Deputy Collector and Rent Controller as also of the Tribunal by urging that rent was outstanding from December, 2003 and it was demanded by addressing written notice which was despatched but the premises were found locked and therefore the notice came to be pasted. That the contents of the notice have been duly proved. His argument is that if one of the two grounds for eviction has been proved, then, the eviction is justified and sustainable and should not be interfered with even if it is found to be vitiated on the other ground. Therefore, the Writ petition be dismissed.

10. It is not possible to accept the contentions of the learned Advocate appearing for the respondents.

11. I have carefully perused the eviction application, a copy of which is at page 24 of the paper book which shows that relationship of the parties, landlord and tenant commenced sometime by lease agreement dated 1.8.1984. Initially the monthly rent was Rs. 300/-and later on it came to be enhanced to Rs. 400/-. When the rent sought was enhanced and how the enhancement was made has not been set out in the eviction application and what is stated is that the rent was not paid after December, 2003. The Goa, Daman and Diu Buildings (Lease Rent & Eviction) Control Act 1968 and Rules, 1969 ("the Rent Control Act" for short), to enable the landlord to seek eviction of the tenant from the premises u/ s 22(2)(a) reads thus:-

That the tenant is in arrears in payment of rent due by him in respect of the building for a total period of three months and has failed to pay or tender such

arrears of rent as are legally recoverable from him within thirty days of the receipt of or of the refusal of a registered notice served on him by the landlord for such arrears; or;

12. Perusal of this provision would indicate that if an eviction is to be sought on the ground of default in payment of rent when it falls due and there are arrears then, there is specific period for which they can be said to be unpaid or in arrears and thereafter a registered notice has to be served by the landlord demanding such arrears and within 30 days from the receipt of the same or of the refusal of the said notice, if the amount demanded and legally recoverable has not been paid. No landlord can seek eviction when these essential ingredients are absent in the application. It is once they are not in the pleadings then no amount of evidence could have assisted the respondents. Even the evidence on this point is very vague nothing but reiteration of the pleadings.

13. In so far as other ground namely non-user of the premises for the requisite period is concerned, what has been pleaded is that the first respondent/petitioner ceased to occupy the premises for a period more than a year from the date of the application for eviction and kept the premises closed. As far as this aspect is concerned, the landlord can seek eviction of the tenant from the premises u/s 22(1)(f) of the Rent Control Act which clearly states that tenant must have ceased to occupy the building for a continuous period of four months without reasonable cause. Obviously this means that the premises have remained unoccupied prior to the date of application for eviction. The application for eviction does not set out that it has been kept closed or that prior to the filing of the application, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause. In such circumstances even on that count eviction could not have been ordered, much less ex-parte.

14. Once I have reached the conclusion that the eviction of the petitioner/tenant from the said premises on these counts is contrary to the law and the authorities have committed serious errors apparent on the face of the record, then, I would be failing in my duty if I don't quash and set aside their ordeRs.

15. Accordingly, the Writ Petition succeeds. The orders of the eviction impugned in this Writ Petition are quashed and set aside. The application for eviction preferred by the respondents shall be heard afresh by Deputy Collector and Rent Controller, Margao in accordance with law and without being influenced in any manner by the earlier ordeRs. The respondents are at liberty to apply for amendment of the said application and, if such an application is made the same be decided after hearing both sides and in accordance with law.

16. Mr. Kamat states that the petitioner/tenant will not insist on a formal notice or summons being served of the subject proceeding but shall appear before the Rent Controller on the date and time stipulated in this order. Accordingly, it is directed that both the parties shall appear before the Rent Controller on 24.2.2012 at 3.00p.m. The Deputy Collector and Rent Controller then to proceed

with the matter and endeavour to dispose of the eviction application as expeditiously as possible and in any case within a period of four months from the date of appearance of the parties. The petitioner/tenant will be allowed to file reply/written statement to the eviction application/amendment application provided he abides by the orders and directions issued by this Court and appear before the Deputy Collector and Rent Controller on the date and time fixed in this order.

17. Rule is made absolute in the above terms.

18. Writ Petition disposed off with no order as to costs.