

(1998) 06 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 25 of 1997

Nurallah Kamrudhin Veljee	Vs	APPELLANT
Mrs. Veronica Menezes and others		RESPONDENT

Date of Decision : 15-06-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 101, 27, 3
General Clauses Act, 1897 — Section 27
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 17, 2, 21, 22(1), 22(3)
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 — Rule 11

Citation : (1999) 2 ALLMR 217 : (1998) 4 BomCR 215

Hon'ble Judges : J.A. Patil, J

Bench : Single Bench

Advocate : R.V. Kamat, for the Appellant; M.B. D'Costa, for the Respondent

Judgement

J.A. Patil, J.—By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order of the Administrative Tribunal. Goa passed on 29th November 1996 in Eviction Appeal No. 27 of 1993 confirming the eviction order dated 30th August 1993 passed by the Additional Rent Controller, North Goa, Panaji in Rent Case No. Rent/ARC/N/1/92.

2. The petitioner is the tenant and the respondent No. 1 is the landlady in respect of the suit premises forming part of a building consisting of ground plus one floor standing on Chalta No. 109 of P.T. Sheet No. 35 of City Survey of Panaji. The petitioner took the premises under a lease deed dated 8th August 1986 on a monthly rent of Rs. 500/-. As per the term of the lease the said rent was later on increased to Rs. 600/- per month. The petitioner took the said premises for 25 years on rent payable on or before the 10th of the month next following. According to the respondent No. 1, the petitioner fell in arrears of rent for 5

months from June 1991 onwards. The petitioner thereafter issued a cheque of Rs. 3,000/- to the respondent No. 1 but the cheque was returned unpaid for want of funds. Even thereafter respondent No. 1 approached the petitioner several times but the latter simply promised to issue a fresh cheque as soon as he received any payment. Since no payment towards the arrears of rent was made by the petitioner, respondent No. 1 sent a legal notice dated 4th December 1991 to the petitioner through her advocate and called upon the petitioner to pay the arrears within 30 days from the receipt of the said notice. According to respondent No. 1, the said demand notice was received by the petitioner on 10th December 1991. However, the petitioner failed to comply with the demand made in the notice and did not clear the arrears of rent. Consequently, on 13th February 1992, respondent No. 1 was constrained to file an eviction application u/s 22 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as "the Act" for short).

3. The Additional Rent Controller, Panaji, issued a summons dated 6th March 1992 to the petitioner requiring him to attend the Court on 20th April 1992. The summons was served on the petitioner on 16th March 1992. The petitioner, however, did not make his appearance either personally or through his advocate before the Additional Rent Controller on 20th April 1992. Consequently, the eviction proceedings were directed to proceed ex parte against the petitioner. Thereafter, for some reason or the other, the proceedings were adjourned for four times. Finally, on 16th October 1992, the statement of respondent No. 1 was recorded and the case was posted to 5th November 1992 for passing final order. In the meantime, on 30th October 1992, the petitioner appeared before the Additional Rent Controller and submitted three applications. The first was an application for setting aside the ex parte order, the second was an application for condonation of delay in depositing the arrears of rent and the third was an application for permitting him to deposit the arrears of rent of Rs. 10,200/- for the period of 17 months from June 1991 till October 1992 with further permission to deposit future rents till the termination of the proceedings. In view of these three applications filed by the petitioner, the Additional Rent Controller did not pass his final order on 5th November 1992. It appears that thereafter the proceedings were adjourned from time to time. Finally the Additional Rent Controller heard both the parties on 9th June 1993 and passed a common final order on 30th August 1993 whereby he allowed the eviction application filed by the respondent No. 1 and directed the petitioner to vacate the demised premises and put respondent No. 1 in possession thereof within a period of three months. As regards the above mentioned three applications filed by the petitioner, the Additional Rent Controller was pleased to reject the same. He came to the conclusion that the petitioner had fallen in arrears of rent for more than three months and had neglected to clear the same. He also came to the conclusion that the petitioner had committed wilful default in payment of rent. The Additional Rent Controller found that the applications made by the petitioner were not bona fide and as such they did not deserve any consideration.

4. Feeling aggrieved by this Order, the petitioner carried an appeal being Eviction Appeal No. 27 of 1993 in the Administrative Tribunal, Goa. However, the appeal also met the same fate and it was dismissed on 29th November 1996. While upholding the order of the Additional Rent Controller, the Administrative Tribunal observed that the present petitioner took too lightly his obligation to pay the rent and took the Court of Additional Rent Controller for granted by not attending the proceedings and not contesting the same. It was, therefore, held that the petitioner/tenant was not entitled to any protection under the Act.

5. Shri R.V. Kamat, the learned advocate for the petitioner, made two submissions before me. The first is that the Additional Rent Controller should have treated the petitioner's application to deposit the rent as one u/s 22(4) of the Act and allowed him to explain the cause of his default. The second submission made by Shri Kamat pertains to the validity of the service of demand notice sent by respondent No. 1. According to Shri Kamat, the said demand notice was not addressed on the residential address of the petitioner and that it was not received by the petitioner. Hence, according to Shri Kamat, no valid order of eviction could have been passed against the petitioner in the absence of service of a valid demand notice.

6. Shri D''Costa, the learned Advocate for the respondent No. 1, on the other hand, pointed out that the petitioner had been all along negligent in paying the arrears of rent. Shri D''Costa pointed out that after having fallen in arrears of rent from June 1991, the petitioner first issued a cheque to the respondent No. 1 which was bounced on account of want of sufficient funds in the petitioner's account. (sic) thereafter the petitioner did not bother to clear the arrears of rent eventhough he was duly served with a demand notice. Shri D''Costa further pointed out that the petitioner chose to remain absent before the Additional Rent Controller on 20th April 1992 after the service of summons and did not care to pay the arrears of rent within 30 days from the service of summons. According to Shri D''Costa, the reasons stated in the petitioner's application for his absence in Goa and inability to attend the Court of the Additional Rent Controller were all false, vague and unsatisfactory. He, therefore, submitted that there was nothing illegal for the Additional Rent Controller to pass the eviction order against the petitioner. As regards the service of the demand notice, Shri D''Costa submitted that it is perfectly valid and that the petitioner did receive the same.

7. Before turning to consider the above two submissions made by Shri Kamat, it will be necessary to make a reference to the relevant provisions of the Act. It may be noted that the Act was enacted to provide inter alia for the control of rents and evictions. Section 17 deals with the obligation of the tenant to pay rent and sub-section (1) thereof states that every tenant shall pay rent within the time fixed by contract or, in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Chapter V controls eviction of tenants. Section 21 in substance states that a tenant shall not be evicted whether in execution of a decree or otherwise, except in accordance with

the provisions of Chapter V. Section 22 contemplates an application by a landlord for eviction of his tenant on various grounds including the ground of non-payment of rent for a period of 3 months. At this stage it would be proper to reproduce the relevant part of section 22 as follows:--

"Section 22. Grounds of eviction.-(1) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.

(2) If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied :

(a) 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

(b)

(c)

(d)

(e)

(f)

(g)

The Controller shall make an order directing the tenant to put the landlord in possession of the building; and if the Controller is not so satisfied he shall make an order rejecting" the application.

(3) No order for the 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 the cost of application:

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any building he again makes a default in the payment of rent of that building for a total period of three months.

(4) In any proceeding falling under clause (a) of sub-section (2), if the Controller on an application made to it is satisfied that the tenant's default to pay, tender or deposit rent was not without reasonable cause, he may, notwithstanding anything contained in sub-section (3) or in section 32, after giving the parties an opportunity of being heard, give the tenant a 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."

8. A careful perusal of the above provisions will show that attempt is made to strike a balance between the tenant's right to remain in possession of the leased premises as well as the landlord's right to evict a defaulting tenant. A tenant who regularly pays the rent and is not in arrears of rent for 3 months or more gets protection against eviction and he cannot be evicted by the landlord on the ground of non-payment of rent. Even in the case of non-payment of rent for three months, the Act gives much indulgence to the defaulting tenant by giving him certain opportunities and time to clear the arrears. It will be seen that a tenant who remains in arrears of rent for 3 months or more gets three opportunities. Out of which one is prior to the filing of the eviction proceedings and the other two, after the filing of the eviction proceedings by the landlord. The first opportunity gives a defaulting tenant 30 days time after the receipt of a registered notice by the landlord demanding the arrears of rent. If the tenant within 30 days after the receipt of such demand notice pays or tenders the arrears of rent which are legally recoverable from him then his possession is protected since in that event the landlord has no cause of action against the tenant to file an eviction proceeding on the ground of non-payment of rent. The second opportunity which the defaulting tenant gets is after the filing of eviction proceedings and it is available to him after service of summons. All that is required to be done by such a defaulting tenant is that he has to pay or tender to the landlord or deposit with the Controller the arrears of rent due by him upto the date of such payment, tender or deposit together with the costs of the application. If this is done within 30 days of the service of summons, then the tenant will be saved from the landlord's action for eviction on the ground of non-payment of rent. It is material to note that this opportunity is available to the tenant despite his failure to pay the arrears of rent within 30 days after the receipt of demand notice given by the landlord. Thus sub-section (3) of section 22 gives a further chance to the defaulting tenant who has failed to comply with the provisions of section 22(2) (a), It is further material to note that while availing the second opportunity, the tenant need not give any explanation for his default nor is it necessary for him to show cause to the satisfaction of the Rent Controller. Once he complies with the provisions of sub-section (3) of section 22 then there is an embargo put on the power of the Rent Controller to pass an eviction order even though the tenant has failed to pay the arrears of rent of 3 months or more within 30 days after the receipt of the demand notice by him.

9. The defaulting tenant who fails to avail of these two opportunities or fails to comply with the aforesaid provisions, gets one more opportunity during the pendency of the proceedings to save his possession of the demised premises. This third opportunity is contemplated by sub-section (4) of section 2. All that the tenant has to do is to prove to the satisfaction of the Rent Controller that his default to pay, tender or deposit the arrears of rent was due to some reasonable cause. If the Rent Controller is satisfied with the explanation given by the tenant for his default, then sub-section (4) empowers the Rent Controller with a discretion to give the tenant further reasonable time to pay or tender the rent

due by him upto the date of such payment or tender and if the tenant makes such payment as contemplated by sub-section (4), then the Rent Controller is bound to reject the landlord's application for eviction. The above analysis of the provisions of section 22(1), (2)(a), (3) and (4) thus shows that the default in payment of rent for 3 months by the tenant does not ipso facto conclude the matter enabling the Rent Controller to pass an eviction order. The Legislature has thought it proper to provide for two more opportunities to the defaulting tenant who does not dispute the fact of his being in arrears of rent for three months or more. The tenant gets protection against the action by the landlord to evict him on the ground of non-payment of rent if he avails of all the opportunities contemplated by sub-sections (3) and (4) and complies with the same. In such event, the landlord has to be content only with the realization of all the arrears of rent.

10. Coming to the first contention of Shri Kamat which is to the effect that the Additional Rent Controller ought to have treated the petitioner's application for deposit of arrears of rent as one u/s 22(4) and given him an opportunity to explain as to why he could not pay the arrears before. Since this opportunity was denied to the petitioner, Shri Kamat contended that there was infraction of the provisions of section 22(4) rendering the eviction order illegal. Shri D'Costa on the other hand submitted that the petitioner's said application purports to be an application u/s 32(4) and as such there is no question of giving any opportunity to the petitioner to pay the arrears of rent. In my opinion, the application dated 30th October 1992 filed by the petitioner seeking permission to deposit the upto date arrears of rent purports to be an application u/s 22(4) and not u/s 32(4) for the simple reason that the provisions of section 32 come into picture when the tenant chooses to contest the proceedings including one on the ground of non-payment of rent. In the instant case there was no question of petitioner contesting the proceedings, since the fact that the non-payment of rent by him since June 1991 was admitted by him. Therefore, the petitioner's application for permission to deposit the upto date arrears of rent falls u/s 22(4) as contended by Shri Kamat.

11. The next question to be considered is whether the Additional Rent Controller was in error in not allowing the petitioner to show reasonable cause for his failure to pay the arrears of rent. It is material to note in the instant case that the petitioner failed to appear before the Additional Rent Controller after three service of summons and he also failed to pay the arrears of rent together with costs of the application, with the result that the eviction application was directed to proceed ex parte against him. Shri Kamat contended before me that application u/s 22(4) can be filed by the tenant at any time during the pendency of the proceedings. It is not possible to accept this submission as it ignores the basic fact that the eviction proceedings against the petitioner were directed to proceed ex parte. The petitioner sought to intervene at the stage when the ex parte hearing was over and the case was fixed only for the purpose of passing final order on 5th November 1992. It appears that in view of the petitioner's

application, the Additional Rent Controller postponed the passing of final order. Any way, unless and until the order to proceed ex parte was set aside, the petitioner could not have been allowed to participate in the proceeding nor could his application u/s 22(4) have been entertained. The order to proceed ex parte against the petitioner could be set aside only if the petitioner could assign good reason for his previous non-appearance for over six months. If the petitioner's application is treated as an application under Rule 11 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 to set aside ex parte order, then he would have been required to satisfy the Additional Rent Controller that he was prevented by some unavoidable circumstances from appearing before him on 20th April 1992. The Additional Rent Controller heard the petitioner but he was not satisfied. Hence he rejected the said application. It is the petitioner's contention that on 15th April 1992 he was required to go to Bombay for medical treatment and he stayed there upto 25th October 1992. In the first instance the petitioner did not specify as to what was the nature of his illness which required him to be at Bombay almost for a period of 6 months. The Additional Rent Controller has pointed out that petitioner did not produce any medical certificate. Further it is interesting to note that it is not that during all these 6 months, the petitioner was in Bombay only, as on some occasions during the said period he had been to Goa. The Tribunal has pointed out that if the petitioner could come to Goa to file a suit in the Court of Civil Judge, Senior Division, he could certainly file an application before the Additional Rent Controller to set aside the ex parte order. It is true that the petitioner did file such an application but only on 30th October 1992, that is, after a period of more than 6 months. Rule 11 referred to above contemplates filing of an application for setting aside ex parte order within 30 days from the date of such order. As already pointed out the order to proceed ex parte against the petitioner was passed on 20th April 1992. It will thus be clear that the petitioner's application for setting aside the ex parte order was itself time barred. Even then the Additional Rent Controller proceeded to consider the same on merits but found that the petitioner had made out no case. He, therefore, rightly rejected the said application of the petitioner to set aside the ex parte order. Consequently, there was no question of allowing the petitioner to participate in the proceedings and giving him an opportunity to show cause that the default in payment of rent was "not without reasonable cause".

12. Reference may be made to the two decisions relied upon by Shri Kamat. The first is a Division Bench decision of this Court in Maria Madeirae Fernandes Vs. Vishnu Mahadeo Kanekar, . However having regard to the facts of the said case, it will be seen that reliance placed by Shri Kamat upon it is not proper. In that case the respondent/tenant was served with the summons which required him to attend the Court of the Additional Rent Controller on 5th June 1980. Accordingly the tenant did appear and on the next date, that is, on 10th July 1980 he filed his written statement alongwith an application for deposit of the arrears of rent. Thereafter on 14th July 1980 the landlady moved an application u/s 32(4)

praying for stopping further proceedings by contending that the tenant had no right to contest the proceedings since he had failed to pay the arrears or deposit the same within 30 days from the date of service of summons. The tenant contended that he had already moved an application for deposit but no order was passed till date to deposit the arrears of rent. Although the Additional Rent Controller allowed him to deposit the arrears of rent without prejudice to the rights of the landlady, he ultimately took a view that the tenant ought to have filed the application for deposit within 30 days from the date of service of summons and since he made the said application beyond the prescribed time, the application was barred by time and that there was no sufficient cause shown by him for filing the application beyond the prescribed time. The Administrative Tribunal upheld the Order passed by the Additional Rent Controller but the Division Bench of this Court set aside the above orders and remanded the matter to the Rent Controller to hear the application afresh and to decide whether there was reasonable cause on the part of the tenant not to pay the rents to the landlady. In paragraph 16 of the Judgement while dealing with the reason given by the Rent Controller that the tenant's application was beyond time, the Division Bench comprising of Pendse and Kamat, JJ., observed:-

"The stage of option of the tenant to move the Controller u/s 22(3) within 30 days of the date of service of summons is for avoiding eviction and put an end to the proceedings at its very inception. The tenant can equally apply at any time of the proceedings u/s 22(4) by admitting his default and showing reasonable cause for such default."

It is on these observations that Shri Kamat has placed reliance.

13. However, having regard to the facts in the instant case as well as the facts in the case before the Division Bench, it would be clear that they differ in one material respect. In the case before me, the petitioner was proceeded ex parte whereas in the case before the Division Bench the tenant did not only file his written statement but also filed an application u/s 22(4) of the Act. The said application was found to be beyond the period of 30 days after the service of summons, but their Lordships took the view that such an application can be made at any stage of the proceedings and no time limit is fixed for making such an application. It will thus be seen that the ratio of the decision is that an application u/s 22(4) can be made at any time during the pendency of the proceedings. However, the said ratio has to be read in the background of the fact that the tenant in that case had put in his appearance and filed his written statement. The said decision cannot be read as an authority on the point that the tenant after the service of summons need not appear before the Court and that he can, as per his convenience at any time during the pendency of the proceedings, make an application u/s 22(4) irrespective of his being ex parte in the case. If such an interpretation as sought to be put by Shri Kamat is accepted, that it would lead to hazardous result and make the landlord's right to recover possession on the ground of non-payment of rent a sheer mockery. Moreover it

would render the procedure for setting aside ex parte orders as laid down by Rule 11 nugatory and redundant. Therefore on a careful consideration of the said decision and the peculiar facts of the present case, I am of a clear view that the petitioner's application u/s 22(4) for depositing the arrears of rent could have been entertained by the Additional Rent Controller only after the petitioner had succeeded in getting the ex parte order set aside by showing that due to some unavoidable circumstance he was prevented from appearing before the Court on 20th April 1992. Since the petitioner has failed to make out a case for his absence, there was no question of considering his application u/s 22(4) and giving him an opportunity to show that his default was "not without reasonable cause. This disposes of the first submission made by Shri Kamat.

14. The second case relied upon by Shri Kamat is Shamsunder Kaka Talkar since deceased through his legal heirs Vs. Rent Controller and Others, decided by a learned Single Judge T.K. Chandrashekhara Das of this High Court. In that case the facts were that a landlord had filed an eviction application against his tenant on the grounds of default in payment of rent and caesura to occupy the premises for a continuous period of four months without any reasonable cause, that is, the grounds u/s 22(2)(a) and (f) of the Act. The Tenant filed his written statement contesting the proceedings but without paying or tendering the upto date arrears of rent. The landlord therefore filed four separate applications u/s 32(4) of the Act praying for stopping the proceedings. The Rent Controller allowed those applications and stopped the proceedings directing the tenant to vacate the suit premises. In appeal, the Administrative Tribunal confirmed that order. In the writ petition filed by the tenant, the learned Single Judge compared the provisions of section 22 with those of section 32 and pointed out that while the former section gives an opportunity to the defaulting tenant to show that his default was not without reasonable cause and a discretion to the Rent Controller to give such tenant reasonable time to pay or tender upto date arrears, the latter section does not give any such opportunity. The learned Judge therefore held that in order to obviate absurd result in reading section 32(4) grammatically, it was necessary to read section 22(4) into section 32(4) so that the Rent Controller would be bound to afford reasonable time after finding that the tenant was defaulting in making pendente lite payment without sufficient cause but before stopping all further proceedings and making an order to put the landlord in possession. In the instant case, the facts are, however, quite different. The petitioner tenant was proceeded ex parte as he did not appear and file his written statement. There was no question of application of the provisions of section 32(4) since there was no contest and the default was admitted. Therefore, the case relied upon by Shri Kamat does not help him.

15. The second contention of Shri Kamat relates to the validity of the demand notice dated 4th December 1991 given by the respondent No. 1 to the petitioner calling upon him to clear the arrears of rent due from June 1991 within 30 days of the receipt of the said notice. There is no dispute of the fact that the petitioner was in arrears of rent from June 1991 and that respondent No. 1 had given a

demand notice as per section 22(2)(a). What is sought to be contended by Shri Kamat is that the notice was not sent on the residential address of the petitioner and it was not received by the petitioner. A copy of the demand notice produced on the record shows that it was addressed to the petitioner at the address of Mahatma Gandhi Road, Opp. Mascarenhas Building, Panaji-Goa 403 001. Copy of the postal acknowledgment coupled with the defendant's averment in the application show that the said notice was received by his father. On the basis of this, it was contended before me that the demand notice was not served on and received by the petitioner. It was submitted that the said notice ought to have been sent on the petitioner's address of the demised premises. There is nothing in the Act which requires the landlord to send such a notice to the tenant on the address of the demised premises. Shri D'Cqsta, the learned advocate (or the respondent No. 1, pointed out that the petitioner's contention that at the relevant time he was residing elsewhere is vague and not good. The petitioner stated in his application that he was residing in a flat at St. Inez. However, he conveniently omitted to specify the number of the flat, the name of the building and the name of the road on which it was situated. It is material to note that the summons in the eviction proceedings was served on the petitioner on the above mentioned address. In the title of his application the petitioner mentioned the same address though he could have very well specified his correct address if he was residing elsewhere. It will, therefore, be seen that the contention of non-receipt of the demand notice is not true and genuine and it has been rightly held that the petitioner was duly served with the demand notice on 4th December 1991.

16. Shri Kamat made a reference to the decision in M/s. Green View Radio Service Vs. Laxmibai Ramji and another, wherein it was observed that where a notice of eviction is sent by registered acknowledgment due to the correct address and the acknowledgment is received back with recipient's signature, there is a presumption that the addressee has received the letter in due course of business. Shri Kamat laid emphasis on the words "to the correct address". However, in the instant case it cannot be said that the demand notice was not sent on the correct address of the petitioner. As pointed out above, the summons to the petitioner was served on the same address. Therefore, this decision does not help the petitioner in any way.

17. Shri Kamat also relied upon the decision in M/s. Madan and Co. Vs. Wazir Jaivir Chand, , in which their Lordships considered the relevant provisions of Jammu and Kashmir Houses and Shops Rent Control Act, 1966 with regard to the termination notice and pointed out that the tenant was required to be served through post. In that context it was observed that all that a landlord can do to comply with the said provisions was to post a prepaid registered letter (acknowledgment due or otherwise) containing the tenant's correct address. It was further held that once the landlord does this and the letter is delivered to the post office, he has no control over it and it will have to be presumed u/s 27 of the General Clauses Act that the letter was delivered to the addressee. Here

again the emphasis of Shri Kamat is on the words "the tenant's correct address". However, for the reasons given above by me, this decision will not help Shri Kamat any more.

18. In the result it is found that the challenge given by the petitioner to the validity of the eviction order passed against him has no merit and consequently the petition deserves to be dismissed. The petition is, accordingly, dismissed with costs.

19. Petition dismissed.