

(2010) 08 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 858 of 2009

Shabeer Mohamad Aenapure	Vs	APPELLANT
Bhairao Shripad Natekar		RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

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

Citation : (2010) 6 BomCR 109

Hon'ble Judges : Britto N.A., J

Bench : Single Bench

Advocate : Valmiki Menezes, for the Appellant; J.P. Mulgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

Britto N.A., J.—Rule. By consent heard forthwith.

2. This is a tenant's writ petition and is directed against judgment/order dated 2-2-2009 of the learned Administrative Tribunal, Panaji.

3. Heard learned Counsel on behalf of the parties. Perused the records.

4. Some facts are required to be stated to dispose of this writ petition.

5. The Petitioner was occupying the leased premises of a shop, which he was using as a library, on payment of rent of Rs. 105/- per month to Respondent No. 1/landlord.

6. The Petitioner/tenant having fallen in arrears of payment of rent for a period of more than three months, the landlord filed eviction proceedings for eviction of the tenant u/s 22(2)(a) of the Goa Buildings (L, R and E) Control Act, 1968. These proceedings were registered under No. 39/80 and the same were closed in terms of Sub-section (3) of Section 22 of the said Act.

7. The tenant again became a defaulter, and the landlord served a notice upon

the tenant dated 1-2-1984 claiming arrears of rent from March 19, 1983, and upon failure to pay the said arrears, the landlord filed another eviction proceedings on 16-3-1984 again u/s 22(2)(a) of the said Act. Pursuant to order dated 17-5-1991, of the Administrative Tribunal an inquiry was held and the application filed by the landlord came to be dismissed by order of the Rent Controller, Mapusa, dated 11-12-2002.

8. The landlord preferred an appeal against the said order of dismissal dated 11-12-2002 before the Administrative Tribunal. This appeal was filed on 6-1-2003. The landlord then filed an application on 7-7-2007 u/s 32(4) of the Act. The application was first replied to by reply dated 23-7-2007 in which the tenant, inter alia, stated that he was willing to deposit the rent before the Tribunal. However, the said application dated 11-10-2006 filed by the tenant came to be allowed by the impugned order of the Tribunal, and as a result, further proceedings have been stopped and the tenant is directed to be evicted from the suit premises within a period of 45 days.

9. There is no dispute that by virtue of the order of this Court dated 20-1-2010 arrears of rent amounting to Rs. 9,030/- have been paid; although it is not stated as to from which month the said arrears have been calculated. Be that as it may, the first contention which was raised by the tenant before the Tribunal and which is also raised before this Court is that the tenant had not received the notice of the appeal filed by the landlord, and he came to know about the same when the notice of application dated 11-10-2006 u/s 32(4) of the Act was served upon him.

10. The learned Tribunal has come to the conclusion that the tenant was duly served with notice by affixation and that was in accordance with law.

11. Shri Valmiki Menezes, learned Counsel on behalf of the tenant, submits that the Petitioner was not served with the notice of the appeal as required by Rule 10 of the Goa Buildings (L, R and E) Control Rules, 1969, and, in my view, there appears to be a merit in the said submission. Rule 10 of the said Rules prescribes the manner of giving or serving notices or orders. Sub-rule (1) thereof provides that save as otherwise provided in these Rules, every notice under the Act may be served either by tendering or delivering a copy thereof or sending such copy by post by registered post A.D. to the person on whom it is to be served or his authorized agent or if service in the manner aforesaid cannot be made, by affixing a copy thereof at his last known place of residence.

12. The provisions of Rule 10 do show that sending a notice by registered post is one of the modes of service of notice. It appears that the notice sent by registered post was not served on the tenant as the suit premises were found closed, and then it was served by affixing a copy of the notice on the suit premises i.e. the place where the tenant was carrying on his business of a library. The provisions of Sub-rule (1) of Rule 10 show that in case the notice could not be served by registered post A.D., it was required to be affixed not on

the business premises but on the last known place of residence. Admittedly, the tenant was not served with notice by affixing it at his last known place of residence, and, therefore the tenant's contention that he had no notice of the filing of the appeal until he received a notice of the application dated 11-10-2006 u/s 32(4) of the Act, has got to be accepted. The Tribunal's conclusion that the tenant was served with notice of the appeal in accordance with law, therefore, is erroneous.

13. Shri Menezes, learned Counsel on behalf of the tenant next submits that the case be remanded to the learned Tribunal to decide the appeal in accordance with law, against the order dated 11-12-2002 of the learned Rent Controller.

14. I am not inclined to accede to this submission of the learned Counsel, for in my opinion, the learned Tribunal has also decided the appeal on merits of the controversy, as regards non-payment of rents, which was a ground taken.

15. The learned Tribunal has taken note of the provisions of the proviso below Sub-section (3) of Section 22 of the Act which reads as follows:

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.

16. The tenant had taken the benefit of the proviso in 39/80. The landlord had then again demanded the rent from the tenant from April, 1983. The learned Tribunal has taken note of the written statement supported by affidavit filed by the tenant before the Rent Controller in which the tenant had admitted that he was in arrears of rent from the month of August, 1983. This was on 7-8-1984, which means that the tenant had admitted non payment of rent for a period of about a year. The learned Tribunal further held that the tenant's statement that he had sent the rents by money order and the landlord had refused to accept the same telling the tenant that the said rent should be adjusted towards the cost of repairs was not supported by any evidence. The learned Tribunal further observed, and in my view rightly, that in case the landlord had refused to accept the rent sent by money order there was a remedy available to the tenant u/s 18 of the Rent Act. The learned Tribunal further held that the landlord had even filed an application for withdrawal of rent from 16-3-1984 only to find out that the rent was not at all deposited before the Rent Controller. The tenant also did not pay rent to the landlord from December, 2002 after the landlord's application for eviction was dismissed till about he received the notice of the application u/s 32(4) of the Act on or about 7-7-2007. Although, the tenant filed an application/reply on 23-6-2007 showing his willingness to deposit the rent, the tenant did not pursue the same inasmuch as by another application dated 6-8-2007 the tenant raised another dispute that he would deposit the rent only after it was adjusted towards the expenditure incurred by him as regards the suit shop; and the fact remains that no rent was also paid by the tenant to the landlord for another two years till the impugned Order came to be passed on 2-2-2009.

17. The learned Tribunal has observed, and in my view rightly, that although the Rent Act is a beneficial legislation Section 32 is enacted to protect the interest of the landlord to secure rent from the cantankerous tenant who fails to pay or deposit the same before the Controller or the Appellate or revisional authorities so that the landlord is not driven to file different proceedings for the recovery of rents in another forum. The tenant had defaulted and the first case for eviction filed against him was closed after payment was made. The tenant had again defaulted, and it was admitted by the tenant that the arrears of rent from August, 1983 were not paid by him. The learned Tribunal, therefore, came to the conclusion that the tenant had committed persistent defaults in paying the rents, and thus was contumacious defaulter and the default was not only wilful but persistent and not free from deliberate harassment, and, therefore, it could not be said that his failure to deposit the rent by any stretch of imagination could be said to be bona fide.

18. The Apex Court in N.D. Thandani (Dead) by Lrs. Vs. Arnavaz Rustom Printer and Another, has observed that when a claim for eviction founded on the simple ground of default in payment remains pending for years, obviously because of the reluctance and the procrastinating tactics of the tenant, is nothing but a case of wilful default. The facts of the case clearly show that the tenant was a chronic wilful defaulter not only before the Rent Controller but as well as before the Tribunal.

19. The impugned order passed by the learned Tribunal in the facts of the case cannot be said to be either perverse or illegal. The learned Tribunal could have even reversed the Order of the Rent Controller and ordered the eviction of the tenant. The tenants must remember that "rent" is the bond which keeps the landlord-tenant relationship alive and they can ill afford to break it, persistently.

20. I find no merit in this writ petition, and consequently the same is hereby dismissed. The rent of Rs. 9030/- deposited before this Court with interest, if any, to be paid to the landlord, by the Registry.