

(2010) 09 BOM CK 0211

In the Bombay High Court

Case No : Writ Petition No. 684 Of 2009

Shaikh Mohammed Hassan (Deceased) Through LR"S, 1(a) APPELLANT
Smt. Zohra Shaikh and 1(b) Shri Shaikh Masud Hassan

Vs

Shri Naracinv Ramakant Sankov Ramakanat Sankov, Shri RESPONDENT
Dattaraj Ramakanat Sankov and Shri Shaikh Abdul Kadar

Date of Decision : 03-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 09 BOM CK 0211

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : G. Shirodkar, for the Appellant; R.G. Ramani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—By this petition filed under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 22.7.2009 passed by the Administrative Tribunal, Panaji in Eviction Appeal No. 140/2002 dismissing the appeal filed against order dated 14.8.2002, passed by the Rent Controller, South Goa, Margao. The respondents filed eviction proceedings u/s 22 (a) (c) and (f) of The Rent Act against Shaikh Mohammed Hassan, the original petitioner. Petitioners 1(a) and 1(b) and respondent No. 3 are the legal representatives of Shaikh Hassan. During the pendency of the case before the Rent Controller, South Goa, Margao, the respondents Nos. 1 and 2 filed application on 2.8.2001 u/s 32 (4) of the Rent Act praying for stopping the proceedings which was allowed by the Rent Controller by Order dated 14.8.2002. An appeal preferred against the said order has been dismissed by Administrative Tribunal by the impugned judgment and order.

2. Perusal of the impugned order discloses that the original tenant was served in June 2000. On 30.11.2001 the tenant filed an application for deposit of the rent

of Rs. 7,200/-for the period from April, 1998 to March, 2000. Another application seeking leave to deposit the rents due was also filed on the same day. Prior thereto the respondents had already filed application dated 12.8.2001 u/s 32 (4) of the Act. The Rent Controller passed an order u/s 32 (4) ordering the petitioner. The said order has been maintained in appeal by the Administrative Tribunal.

3. Mr. Shirodkar, learned Counsel for the petitioner submitted that since the proceedings for eviction were also filed u/s 22(2) (a) without giving any prior notice, the case u/s 22(2) (a) was not maintainable although the proceedings were maintainable u/s 22(2) (c) and (f). He further submitted that since the respondents had not given notice before filing eviction application u/s 22(2) (a) of the Act, the application u/s 32 (4) was not maintainable. He further submitted that in respect of applications dated 30.11.2001 filed by the petitioners, inquiry ought to have been conducted by the Rent Controller and only thereafter the application u/s 32 (4) could have been decided by the Rent Controller.

4. According to the learned Counsel, without giving opportunity to the petitioner to pay the arrears, the learned Rent Controller and the Administrative Tribunal have erred in allowing the application u/s 32 (4) of the Act. In support of his submissions, Mr. Shirodkar relied upon the following judgments.

1. 1987 (2) BCR 224, Maria Madeira e Fernandes Vs. Vishnu Mahadeo Kanekar.
2. 2010 All M.R. 747, in Vinayak Naraya Deshpande & Ors. Vs. Deelip Pralhad Shisode.
3. Sarla Goel and Others Vs. Kishan Chand, .

5. Per contra, Mr. Ramani, Learned Counsel appearing for the respondents Nos. 1 and 2 submitted that the petitioners did not discharge their obligations either by paying or depositing the rents due to the respondents/landlord and as such, the Rent Controller and the Administrative Tribunal were legally justified in passing the impugned judgment and orders. He further submitted that although the original petitioner was served in June 2000, it is only after filing of the application u/s 32(4) of the Act on 2.8.2001 by the respondents Nos. 1 and 2 that the petitioners chose to file applications dated 30.11.2001. He further submitted that the petitioners did not file any application to deposit the rent for the period from May 2000 to May 2001. He further submitted that in terms of Rule 7 of the Rules, the petitioners were bound to deposit all the arrears of rent within one month from the date of service of notice and the same having not been done by the petitioners, the impugned orders are not liable to be set aside.

6. Learned Counsel further submitted that an application raising dispute as to the amount of rent to be paid or deposited has to be filed within a period of one month which is evident from harmonious reading of sub Section (3) and (4) of Section 32 and the same having not been done, the impugned orders are not liable to be set aside. He further submitted that the tenant is bound to deposit

the amount of rent and the rents due during the pendency of the proceedings even in proceedings filed u/s 22 (c) and (f) of the Act as has been held by the Division Bench of this Court in the case of Maria Madeirae Fernandes Vs. Vishnu Mahadeo Kanekar, . He therefore submitted that the petitioners having not complied with the provisions of the Act, no fault can be found with the impugned judgments and orders.

7. I have carefully considered the rival contentions and perused the records.

8. The tribunal has held that although the original tenant received notice of hearing of the case in June 2000, an application for deposit of rent was filed only on 30.11.2001 after a period of 17 months. On 30.11.2001, the petitioners filed two applications seeking permission to deposit the rents. The first application seeking permission to deposit Rs. 7,200/-was for the period from April 1998 to March, 2000. By the second application, permission was sought to deposit the rent from May to November 2001. The petitioners neither paid nor deposited the rents for the months from May 2000 to May 2001. In terms of Rule 7 of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, the tenant against whom eviction proceedings have been filed by the landlord has to deposit the rents due within one month from the date of service of notice and continue to deposit the rents which subsequently become due within 15 days from the date such rents become payable by him.

9. In the case of Maria Madeirae Fernandes Vs. Vishnu Mahadeo Kanekar, , the Division Bench of this Court has held that Section 32 (4) is attracted in all cases of eviction filed against a tenant. Therefore, the petitioners were required to comply with Rule 7 of the Rules. The petitioners having not complied with Section 32 (4) and Rule 7 of the Rules, in my opinion the tribunal was justified in passing the impugned judgment and order.

10. No doubt, in the absence of notice demanding arrears of rent from the tenant by respondent Nos. 1 and 2 the landlords, the application for eviction u/s 22(a) was not maintainable. However, the tenant was supposed to deposit the arrears as well as the rents due during the pendency of the proceedings since the eviction proceedings were filed against the tenant also u/s 22 (c) and (f). This being the position, I am unable to accept the submission of Mr. Shirodkar that no order could have been passed u/s 32 (4) of the Act. Moreover, the petitioners chose to file application seeking deposit of rents only after a period of almost 17 months.

11. I do not deem it necessary to rely on the authorities cited by Mr. Shirodkar in as much as they do not advance the case of the petitioners and the facts in the present case being entirely different. In view of the above, I find that the tribunal has not committed any jurisdictional error while passing the judgment and order or that there is any error of law apparent on the face of the record justifying interference by this Court in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India For the reasons aforesaid, the petition which is

without any merit stands dismissed.