

(1994) 12 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 12 of 1991

Shamsunder Kaka Talkar since deceased through his legal heirs APPELLANT

Vs

Rent Controller and Others RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

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

Citation : (1996) 4 BomCR 39

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

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; S.K. Kakodkar, S.A. and H.R. Bharne, for the Respondent

Final Decision : Allowed

Judgement

T.K. Chandrashekhara Das, J.—The petitioners challenge the judgment and order dated 21-6-1990 passed by the Administrative Tribunal, Goa, Daman and Diu, Panaji in Eviction Appeal No. 47/81 and the order passed in Misc. Application dated 17-11-1982 filed by respondent No. 3 u/s 32 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction), Control Act, 1968 (hereinafter referred to as the Act) and also the order passed by the Rent Controller dated 27-4-1981.

2. The respondent No. 3 are the owners of the building known as Keni Hotel who let out the building in question to M/s. S.G. Enterprises, a partnership firm of which Shamsunder Kaka Talkar and Ganpat Shivaji Naik (respondent No. 4) were the partners. The suit building is shop No. 5 in Keni Hotel. The rate of rent payable by the tenant as per the contract was Rs. 235/- per month. In 1978 the third respondent filed a suit for eviction before the Rent Controller, Goa, North Division, Panaji against M/s. Shamsunder Kaka Talkar and Ganpat S. Naik and M/s. S.G. Enterprises. The suit for eviction was filed on two grounds namely, the arrears of rent and also ceasing to occupy the suit premises continuously for

more than four months without reasonable cause. The said application was opposed by the tenants by filing a written statement dated 16-11-1978. During the pendency of the said suit the respondent No. 3 filed applications before the Rent Controller invoking section 32(4) of the Act, as the tenants kept arrears during the pendency of the proceedings. Four such applications were dated 17-10-1979, 26-12-1979, 28-4-1980 and 17-10-1980. The Rent Controller finding that the explanation tendered by the tenants did not contain sufficient cause for keeping the arrears of rent during the pendency of the suit, passed an order dated 27-4-1981 and stopped the proceedings and also directed the tenants to vacate the suit premises by handing over the possession thereof to respondent No. 3.

3. Aggrieved by the said judgment and order dated 27-4-1981, Shamsunder Kaka Talkar along with M/s. S.G. Enterprises, filed an appeal before the Administrative Tribunal which dismissed the appeal. During the pendency of the matter before the Administrative Tribunal the respondent No. 3 has again filed applications invoking section 32(4) of the Act. He filed five such applications on 31-10-1981, 16-1-1982, 4-9-1982, 17-11-1982 and 25-7-1986. Though these applications were duly replied by the tenant those explanations were not accepted. The Tribunal by its order dated 21-6-1990 dismissed the aforesaid appeal confirming the order of the Rent Controller. In the meantime, the only surviving partner of M/s. Shamsunder Kaka Talkar also died and his legal representatives were impleaded in these proceedings. That is how the present petitioners came to file this petition.

4. The petitioners filed again a review application before the Administrative Tribunal as Eviction Review Application No. 5/90. The said application has also been dismissed by the Administrative Tribunal by its order dated 6-12-1990. A photostat copy of the order dated 6-12-1990 has been produced in this writ petition at Exh. A at page 34. Though originally the said order has not been challenged in this petition by the petitioners, at the time of hearing of this writ petition, the petitioners sought leave to amend the writ petition challenging that order also. A petition to that effect has been filed by the counsel for the petitioners on 10-11-1994 pursuant to the leave granted orally by me at the time of hearing the case on 8-11-1994. The counsel for the respondents though opposed, I did not find any reason not to allow this request for leave to amend since the order passed in review has already been filed along with this writ petition and no prejudice is shown to have caused to the respondents by allowing the amendment. Accordingly I granted leave to amend the writ petition and the proceedings of the Administrative Tribunal in Review Application No. 5/90 also is thus impugned in the writ petition.

5. Before I deal with the facts of the case it is better to closely examine the relevant provisions of the Act, namely, the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968. Though many provisions of this Act are almost common in nature as we find in other Rent Control Acts in other States,

section 32 has been enacted probably because of the historical background of the landlord and tenant relationship which existed in Goa at the time of its enactment. Before the liberation of Goa the relationship of landlord and tenant has been controlled by Decree No. 43525 dated 7-3-1961 promulgated by the then Portuguese Government. Under that Decree eviction of tenants were made liberal to the landlord and many landlords might have used the same as a weapon to suppress the tenants when the State was facing acute shortage of houses. While enacting the present Act, needless to say, some provisions of the previous Decree as mentioned above of the Portuguese Government legislature must have been influenced by the peculiar features of the Decree as aforementioned. The preamble to the present Act indicates that the object of the Act is to control the rents and evictions and rates of hotels apart from the possession of vacant buildings. So the purpose of the Act is to control the eviction and also the requisitioning of vacant buildings to cope up with the scarcity of residential accommodation in the State of Goa, as we see in other States. One of the objects of this Act is also to put an end to the practice prevailing till then of easy method of eviction of tenants at the whims of landlords. The Act provides for the landlord to evict the tenant on the following grounds : Arrears of rent; non-occupation of a building for a considerable time; for re-construction, alterations, additions and repair of a dilapidated building; sub-letting; committing damage to the suit premises, creating nuisance to the occupiers of the other portion of the same building and also to the neighbourhood, etc. All these grounds have been dealt with separately and with a certain amount of rigidity. A landlord can recover possession of the building if the tenant kept the arrears of rent for more than three months and after notice within one month if he fails to pay the rent the landlord will get a cause of action to evict the tenant. The landlord will also get another opportunity to evict a tenant if he commits default in making payment during the pendency of the eviction proceedings on the grounds mentioned as aforesaid. Therefore, the ground based on arrears of rent both before the suit and pendente lite has been dealt with separately by the statute. Section 22(2)(a) of the Act provides for a landlord to file a suit against the tenant for eviction on the ground of arrears of rent which reads as follows :

"Section 22(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."

While this section gives cause of action to the landlord to file a suit for eviction before the Rent Controller, section 32 deals with the situation of keeping arrears of rent during the pendency of the proceedings. It is profitable to refer to section

32 which reads thus :---

"32. Payment or deposit of rent during pendency of proceedings for eviction.---

(1) No tenant against whom a proceeding for eviction has been instituted by a landlord under this Act shall be entitled to contest the proceeding before the Controller or any appellate or revisional authority or to prefer any appeal or revision under this Act, unless he has paid to the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all arrears of rent due in respect of the building up to the date of payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Controller or the appellate or revisional authority.

(2) The deposit of rent under sub-section (1) shall be made within such time and in such manner as may be prescribed.

(3) Where there is any dispute as to the amount of rent to be paid or deposited under sub-section (1), the Controller or the appellate or revisional authority, as the case may be, shall, on application made either by the tenant or by the landlord, and after making such inquiry as he deemed necessary, determine summarily the rent to be so paid or deposited.

(4) If any tenant fails to pay or to deposit the rent as aforesaid, the Controller or the appellate or revisional authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(5) The amount deposited under sub-section (1) may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him in that behalf."

It is relevant to note here one other important and relevant section which are sub-sections (3) and (4) of section 22 :

"(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 up to 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."

Sub-section (3) of section 22 says that even after filing the suit for eviction on the ground of arrears of rent if a tenant makes a default first time he can avoid a decree for eviction if he deposits all the rent upto date within one month from the date of receipt of the notice from the Court. Sub-section (4) of section 22 gives another opportunity where the tenant can avoid the order of eviction. If the tenant was not able to explain the cause of the default of keeping the rent in arrears and non-payment of the same, after giving the parties an opportunity of being heard give the tenant reasonable time to pay or tender the rent due by him to the landlord upto the date of such payment. In this situation also the tenant can avoid a decree for eviction. It is important to note that the legislature wanted to avoid as far as possible to evict a tenant so long as he pays the rent to the landlord promptly. It is also significant to note that sub-section (4) of section 22(2) contains a non-substantive clause and the application of sub-section (3) of section 22 and section 32 has been expressly excluded.

6. Several grounds have been urged before me on behalf of the petitioners and several decisions of this Court have been cited. But I do not think that any of those decisions will be helpful to the petitioners. But I find in the facts of the case and on the basis of the interpretation that I am going to give on section 32 the petitioners have got a valid ground to sustain this writ petition.

7. Section 22(2) and sub-sections (3) and (4), as indicated earlier, deal with situations under which a tenant can avoid the casualty of eviction if he fails to pay the rent regularly. We have also seen that the purpose of sections 22 and 32 are to deal with two separate and distinct situations which are intended to be handled in those sections as is indicated by a Division Bench of this Court in *Maria Madeirae Fernandes Vs. Vishnu Mahadeo Kanekar*, . One is for compelling payment of rent accrued due to anterior period of litigation and the other is pending the litigation. Even though sub-sections (3) and (4) deal with as to how a tenant can avoid the main cause of action that has arisen in favour of the landlord, section 32(1) also makes it imperative for the tenant to deposit all arrears of rent pendente lite also in order to contest the matter and also to continue to deposit the rent in order to avoid the dispossession. Since the wording of the section itself indicates that "payment or deposit of rent during pendency of the proceedings for eviction", it is needless to say that the section deals with the rents accrued or due during the pendency of the proceedings. The Court must give an opportunity to show sufficient cause to such tenant before passing an order of eviction to pay such defaulted rent even after committing the default. On the other hand, section 22(4) clearly says notwithstanding anything contained in sub-section (3) or in section 32 after giving the parties an opportunity of being heard, about the default of the tenant or after being satisfied that the tenant has committed default in payment of rent then the Court should give the tenant another 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 will be rejected. But we do not find such a second opportunity that has been afforded to the tenant after he was found to be defaulted to pay the arrears of rent in section 32, though in both sections tenant is required to show sufficient cause for delay. If in the main proceedings the tenant has got opportunity to deposit arrears of rent for avoiding a decree for eviction the omission of incorporating such a second opportunity in section 32 will definitely lead to absurdity. With regard to default of payment of rent pendente lite, in the circumstances of the case and also taking into account the object that is to be achieved by this legislation no explanation is discernible from the sections and the entire scheme of the Act seemed to be scuttled in such position. If the main litigation can be avoided by the tenant even after the Rent Controller is satisfied that the tenant has committed the default, by availing a further opportunity of making the deposit within a reasonable time as afforded by section 22(4) why the same could not be given after proceedings started? In fact another Division Bench of this Court in Letters Patent Appeal No. 36/1986, though posed the very same question, it did not deal with it because the question arising in that case did not call for to do so. The question that arose in that case was that when an appeal by the tenant against whom eviction order was passed by the Rent Controller on the ground of arrears of rent u/s 22(2)(a), can he file an appeal without depositing entire rent in arrears before the Appellate Court along with appeal? While dealing with section 32, the learned Judge (Sawant, J.) who spoke for the Division Bench poses:

"..... What is more, on such alleged failure to pay the rent, sub-section (4) visits the tenant with the ultimate penalty of stopping of the proceedings and losing the possession of the premises even while the proceedings on merit are still pending, unless the tenant shows sufficient cause to the contrary. That brings about the end of all defences of the tenant on merits, and also of the eviction proceedings themselves. This is what has been happening in practice. Whereas for initiating eviction proceedings on the ground of the arrears of rent, the rent has to be in arrears of three months, and after the amendment, the landlord has to give the tenant a registered notice calling upon him to pay the arrears and show that inspite of the receipt of such notice, the tenant has failed to pay the rent within thirty days of the receipt of the notice, under sub-section (4) of section 32, when the proceedings are pending before any of the authorities, a mere failure to pay the arrears of current month's rent itself entitles him to apply for stopping of all further proceedings and to get possession of the premises and also thereby to end the eviction proceedings themselves. The result has been that the landlord, with a view to take advantage of section 32(4) have been filing eviction proceedings on patently untenable grounds and obtaining possession of the premises only by showing that the tenant has failed to pay the rent under that provision."

In para 7 of the judgment the Division Bench was more critical of that section. It says :

"..... A legislation which is intended to protect the tenant cannot be construed so as to deprive him virtually of the said protection because the landlord's task of recovering the rent becomes more difficult."

8. In supplementing the above observations of the Division Bench shown above I ask why the same benefits provided u/s 22(4) shall not be extended to the tenant in situations envisaged in section 32? I find no reason to refuse such a relief in the scheme of the Act. Therefore similar relief in the nature of section 22(4) should be given to the tenant in invoking section 32 also, particularly, when sub-clause (4) of section 22 says notwithstanding anything contained in section 32. Therefore section 32 is always controlled by sub-section (4) of section 22 and we should read down into section 32(4). Result of such a reading of section 32 will be that even after the Court found that no sufficient cause has been shown by the tenant to the contrary, before stopping the proceedings and before directing the tenant to put the tenant in possession of the building, the Rent Controller or the Appellate Authority as the case may be shall give the tenant an opportunity to pay the rent or deposit all the arrears of rent within a reasonable time. Dispossession can be ordered u/s 32(4) only if the tenant did not avail that opportunity.

9. Let us examine now how far such construction of section 32 is plausible and possible. It is universally accepted principle of interpretation as to how every statute has to be tested in its modulation and application in the background of social object to be achieved as spelt out in its preamble. As brought out by the preamble the Act is mainly aimed to control the eviction. Objectives of an enactment are fixed according to the social necessity and the historical background. The legislation that existed prior to the Act for regulating the relationship of landlord and tenant was partial and balanced very much in favour of the landlord, particularly in matters of eviction. Under the Rent Control Decree 43525 which was in vogue in Goa stipulates that eviction can be ordered on the expiry of the lease or on the revocation or rescission of the contract and that a tenant who is in arrears of rent is liable to pay double the arrears of rent by way of compensation to the landlord. The relevant provisions of the Decree 43525 are as follows :---

"Section 88-1. The eviction, to be decreed or to carry out in terms of the procedural law is the judicial means, inherent to the lessor against the lessee or latter's successor in order to terminate the whole occupation of a building originated by way of lease to be invoked in Court, either at its expiry, when this may be the case, or, before that expiry, on the ground of revocation, rescission or caducity of the agreement.

Section 41-1. The lessee which falls in more in regard to the debt of rents shall pay, besides the latter, a compensation equal to double the rents in arrears, except if, due to offer or deposit of rent, he puts an end to the more within the time-limit of eight days, from its beginning.

Section 42-1. It is also due a compensation equal to double the rent, when the lessee or his successor, without legitimate cause, fails to restore the enjoyment of the building, no sooner the time-limit of lease runs out or the agreement is undone, save, in case of rescission, the provision contemplated in sub-section 2 of the preceding section."

(English Translation supplied).

The mischief that had to be avoided by the statute is the eviction of tenant which was rampant and indiscreetly resorted to according to the whims and fancies of the landlords whereby the tenure of tenancy is mostly dependent upon the idiosyncrasies of the landlords. The Division Bench of this Court in the above quoted decision also had focused their attention to the evils intended to be averted through this Legislation. It says in para 7 of the judgment which reads as follows:

"..... Thirdly, the predominant intendment of the legislation being the security of the tenant, it cannot be destroyed by construing the relevant provisions to guarantee rent to the landlord."

Therefore the legislature wanted to control such social evil while at the same time ensured the landlord the prompt payment of rent. While interpreting each and every section of the enactment this objective is to be borne in mind giving effect to the provisions of the Act.

10. Turning again to the case in hand we have already seen section 22(2)(a) and section 32 deals exclusively with the realm of non-payment of rent. Section 22(2) (a) gives substantive relief to the landlord where a recalcitrant tenant who makes persistent default in making payment of rent is liable to be evicted from the premises. So also u/s 32, as we have seen above, such a tenant who continues to make persistent default in making payment of rent even after the filing of the eviction application such a tenant is also sought to be dealt with very firmly and strongly. Now let us assume in a case where a landlord sought eviction of his tenant solely on the ground of arrears of rent and filed an application u/s 22(2) (a). When such an application was pending notwithstanding any dispute raised by the tenant in contesting that application, if such a dispute has been finally decided and all the contentions of the tenant have been rejected, section 22(4) says that after the Rent Controller is satisfied that the tenant has committed default to pay, tender or deposit the rent, without any reasonable cause, the Rent Controller should give the tenant a reasonable time to pay or tender the rent due by him for the period upto the date of such payment to the landlord. In other words after the Rent Controller enters a finding about the default of the tenant of the accrual of arrears of rent, the Rent Controller is obliged to quantify the entire arrears of rent due both before the litigation and pendente lite upto date and direct the tenant to deposit that amount accrued, within reasonable time. If the tenant deposits that amount within reasonable time then the main application filed u/s 22(2)(a) has to be rejected. It may be noted here what the

tenant is supposed to deposit also includes that rent due after the litigation which part of rent is dealt with by section 32. Therefore u/s 22(2)(a) if a tenant deposits all the arrears of rent due before the litigation and post litigation period, the Rent Controller is bound to give reasonable time after the finding of default by the tenant to deposit. This Court has already held by a Division Bench judgment of this Court in *Maria Madeirae Fernandes Vs. Vishnu Mahadeo Kanekar*, that what is provided in section 32(4) is only an interim arrangement. Therefore the marked difference in section 22(2)(a) and section 32 particularly in section 32(4) is that after the Rent Controller being satisfied that the tenant has committed default in making payment of arrears of rent no further time has been granted in section 32(4) for depositing the arrears of rent. When the main section gives relief in a similar situation and that relief is omitted to be given in the sections dealing with interim period non-providing of time in section 32(4) leads to absurdity, particularly, when it is viewed with the objective to be achieved by the enactment as aforesaid. To avoid such absurdity the Court is always justified in reading down to the section and obviate absurdity to give effect to the legislative intention. It is relevant to quote a paragraph in Maxwell on the Interpretation of Statutes, 12th Edition at page 228 :

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning."

11. The same principle has been reiterated in *Craies on Statute Law*, 7th Edition at page 88 by quoting Willes, J., in *Christopherson v. Lotinga*, says:

"The general rule is stated by Lord Wensleydale in these terms viz., "to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience."

12. Therefore to obviate absurd result in reading section 32(4) grammatically, particularly, with reference to the object of controlling the eviction we have to read section 22(4) into section 32(4); and if so read the Rent Controller or the Appellate Authority or Revisional Authority as the case may be is bound to afford a reasonable time, after finding that the tenant was defaulting in making payment pendente lite without sufficient cause but before stopping all further proceedings and making an order to put the landlord in possession of the building. Otherwise if in exercise of powers under sub-section (4) of section 32 in

the event of a tenant without sufficient cause committed default in making deposit of rent accrued pendente lite and consequently an order has been passed to stop the proceedings and directing the tenant to put in possession and if in fact the tenant was dispossessed after that, the statute is silent what will happen if the tenant deposits all arrears of rent including pendente lite arrears as enjoined by section 22(4) when the main application founded on arrears of rent has to be rejected. The statute is silent about the handing over possession back again by the landlord to the tenant in such an eventuality. After fixing the liability of the tenant about his default in making payment of arrears of rent either before the litigation or after the litigation or both, reasonable time should be given by the Court to the tenant to deposit the amount due as arrived at by the authorities below. This must be a condition precedent to order dispossession of the tenants u/s 32(4), whatever be the grounds on which eviction is sought by the landlord in the main proceeding. Contingency of arrears of rent must be met alike in all situations. Otherwise, as I pointed out earlier, leads to absurdity or repugnancy which has to be avoided by employing the rule of interpretation.

13. Now in this case as we have seen obviously the tenant has not been given time after having entered a finding about his default by the authorities. In fact even the learned Rent Controller by his order dated 27-4-1981 concluded the order by saying that the tenant has failed to show sufficient cause to stop the proceedings and he therefore directed to hand over possession of the suit premises to the landlord within a period of thirty days from the date of receipt of the order. In this case both authorities below found that the tenant was in default and consequently, ordered dispossession. An order u/s 32(4) of the Act cannot be passed to dispossess the tenant until another opportunity is given to the tenant to deposit the amount. Even if the tenant fails to deposit, then only an order of dispossession could be passed.

14. Admittedly, in this case the tenant has not been given time to make deposit of the amount of arrears before passing of the impugned order by the Rent Controller in which case the Rent Controller has no power to stop the proceedings and direct the petitioner to put the landlord in possession of the building in view of the principle laid down by me here.

15. In the result, the Rent Controller's Order dated 27-4-1981 is quashed. Consequently all the orders passed by the Administrative Tribunal are also set aside. The Rent Controller is directed to dispose of the Original Case No. Rent/31/78 in the Court of the Rent Controller, Goa North Division, Panaji, finally, within four months from the date of receipt of the judgment according to law.

16. Writ petition allowed. Rule made absolute. In the circumstances of the case there shall be no order as to costs.