
(2017) 04 BOM CK 0078
In the Bombay High Court
Case No : 67 of 2012

Shri Ashok Jagannath Chodankar

APPELLANT

Vs

Shri Jayram Ramchandra Sirsat

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, Section 22(3), Section 22(4), Section 22(2)(a)

Citation : (2017) 04 BOM CK 0078

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : Sudin Usgaonkar, T. Ghanekar

Judgement

1. Heard Mr. S. G. Desai, learned Senior Counsel for the petitioners and Mr. Sudin Usgaonkar, learned Senior Counsel the respondents.
2. This petition challenges the judgment and order dated 4.1.2011 made by the Administrative Tribunal, allowing Eviction Appeal NO.131/2002 instituted by the respondents(landlords) ordering the eviction of the petitioner(tenant) from the suit premises on the ground of default in payment of rent.
3. The landlords (respondents) by Deed of Lease executed in January, 1966 let out suit premises to the tenant (petitioners) in order to enable the tenant to undertake business as restaurateur. There is no serious dispute that on two occasions prior to institution of the present Eviction Proceedings, the tenant committed a default in payment of rent. However, tenant availed the benefit under Section 22(3) of the Goa Daman and Diu Buildings (Lease, Rent and Eviction) Control Act 1968 ("the Rent Control Act" for short) and consequently, did not suffer any orders for eviction. On the third occasion, there is no serious dispute that the tenant was in arrears in the payment of rent from May,1980 to July,1980, as on date when the landlords issued notice dated 3.9.1980 to the tenant calling upon him to clear such arrears, failing which eviction proceedings

were threatened to be taken up before the Rent Controller.

4. Mr. Desai, learned Senior Counsel for the petitioner has submitted that the tenant after the receipt of the notice dated 3.9.1980 and before the present eviction proceedings could be instituted on 28.10.1980, actually paid arrears in the month of May,1980. This appears to be the correct position if the application for eviction initiated by the landlords is perused. Mr. Desai, further submits that notice dated 3.9.1980 had alleged arrears also in the month of August,1980. However, he submits that in terms of Deed of Lease, the tenant was bound to pay the rent to the landlords on or before the 5th day of the month following month completed. Mr. Desai, submits that rents for the month of August, 1980 were not due until 5th September,1980. He therefore, submits that on the date of the notice i.e.3.9.1980, there were no arrears for the month of August, 1980.

5. The landlords instituted eviction proceedings on 28.10.1980 before the Rent Controller. The tenant deposited the arrears before the Rent Controller and on such basis insisted upon the benefit under Section 22(3) of the Rent Control Act. Such benefit was denied by the Rent Controller to the tenant by holding that such benefit, in accordance with proviso to Section 22(3) can be availed only once. The Rent Controller not only denied the benefit under Section 22(3) to the tenant but further, closed the proceedings and directed eviction of the tenant without any inquiry as to whether grounds under Section 22(2)(a) of the Rent Control Act had been made out and further, without afford of opportunity to the tenant to establish that default, if any, in the payment of the rent was not without reasonable cause as contemplated under Section 22(4) of the Rent Control Act.

6. Aggrieved by the aforesaid, tenant Appealed to the Administrative Tribunal. The Administrative Tribunal, upheld the findings of the Rent Controller that the tenant was not entitled to benefit of Section 22(3) over and again. However, the Administrative Tribunal set aside the order of eviction and remanded the matter to the Rent Controller for examining as to whether the grounds as contemplated under Section 22(2)(a) of the Rent Control Act was made out and further, for afford of opportunity to the tenant as contemplated by Section 22(4) of the Rent Control Act.

7. The Rent Controller upon remand, has held that ground as contemplated under Section 22(2)(a) of the Rent Control Act has been made out, however, Rent Controller accepted the case of the tenant that default to pay rent was not without reasonable cause and therefore, extended the benefit of Section 22(4) of the Rent Control Act to the tenant and dismissed the eviction proceedings made by the landlords by judgment and order dated 16.10.2002.

8. The landlords, aggrieved by the Rent Controller's Judgment and order dated 16.10.2002 appealed to the Administrative Tribunal which has, by impugned judgment and order dated 4.11.2011 reversed the Rent Controller, set aside the Judgment and order dated 16.10.2002 and ordered eviction of the tenant. The

Administrative Tribunal has held that the default on the part of the Tenant to pay rent cannot be said to be with reasonable cause as contemplated by Section 22(4) of the Rent Control Act. Hence, the present petition by the Tenant.

9. Mr. Desai, learned Senior Counsel for the petitioner has raised the following grounds in support of the petition:- (a) That issuance of the notice, when eviction is applied for on the ground of default in payment of rent is a mandatory requirement. He submits that notice dated 3.9.1980 was issued by the landlords in this case however, such notice was defective. He submits that notice demanded rent for the month of August, 1980, when infact as noted earlier rent for the month of August, 1980 fell due only on 5.9.1980. Further, after the receipt of the notice dated 3.9.1980 and before the eviction proceedings could be instituted on 28.10.1980, admittedly, tenant cleared the arrears for the month of May, 1980. Mr. Desai, submits that in such circumstances, notice dated 3.9.1980 stood discharged or in any case could never have been construed as a valid notice for the purposes of institution of the eviction proceedings under Section 22(2)(a) of the Rent Control Act. In the absence of valid notice, Mr. Desai submits that proceedings for eviction under Section 22(2) (a) were incompetent and ought to have been dismissed.

(b) Mr. Desai submits that as on date of institution of eviction proceedings, i.e on 28.10.1980 the tenant could not be said to have been in arrears for a total period of three months. In any case, Mr. Desai, submits that since the arrears for the month of May, 1980 were cleared, a fresh notice was necessary in case landlords were serious about alleging default for the month of June, July and August, 1980. Admittedly, since no such fresh notice was ever issued, the eviction proceedings as initiated by the landlords were incompetent and ought to have been dismissed.

(c) Without prejudice to the aforesaid, Mr. Desai submits that Tribunal has misdirected itself in law by holding that the Rent Controller has granted benefit to the tenant under Section 22(3) for the third time. Mr Desai submits that there is a difference between provisions contained in Section 22(3) and Section 22(4) of the Rent Control Act. Even, though, tenant might not be entitled to the benefit under Section 22(3) of the Rent Control Act more than once, that does not preclude the tenant from availing the benefit under Section 22(4) of the said Act. Mr. Desai, submits that Rent Controller in fact had extended the benefit of Section 22(4) to the tenant and therefore, Tribunal had erred in law in treating such benefit as the one under Section 22(3) of the Rent Control Act. On this ground, Mr. Desai, submits that the impugned order is liable to be set aside.

(d) Mr. Desai submits that in this case there is overwhelming evidence on record which establishes that daughter of the tenant was not well and required treatment inter alia at Mumbai. Mr. Desai, submits that such reason is sufficient to hold that default in payment of rent was not without reasonable cause. Mr. Desai, submits that the Rent Controller had accepted the case of the tenant and the Appeal Court without adverting to the relevant parameters has interfered

with the Rent Controller's order. Mr. Desai submits that there is difference between "reasonable cause" and "sufficient cause". By treating both the terms as synonymous the Tribunal has again committed a serious error of law which goes to the root of the exercise of jurisdiction. Mr. Desai, submits that this is a case where this Court ought to exercise extra ordinary jurisdiction and upset the impugned judgment and order made by the Tribunal.

(e) Finally Mr. Desai submits that Rent Act is beneficial legislation. The Act confers several benefits upon the Tenant and is required to be liberally construed in favour of the tenant. He submits that assuming that there is some ambiguity in provisions such ambiguity is required to be resolved in favour of the tenant and not the landlord. On this ground, Mr. Desai submits that the impugned judgment and order made by the Tribunal is required to be set aside.

10. Mr. Desai, relied upon certain decisions which shall be referred to in the course of this judgment and order.

11. Mr. Usgaonkar, learned Senior counsel for the landlords submits that the tenant in the present case is habitual and cantankerous defaulter. From the record it is evident that the tenant has committed defaults in payment of rent on several occasions and further, by raising frivolous plea has protracted the eviction proceedings for the last 37 years. In the meanwhile, the tenant, has enjoyed the possession and use of the suit premises for restaurant purposes. Mr. Usgaonkar submits that premises are in prime commercial locality and tenant has committed defaults in payment of paltry rent amount of ₹250/-. Mr. Usgaonkar, submits that there is neither any error of jurisdiction nor any error of law in the impugned judgment and order. Findings recorded by the Tribunal are supported by overwhelming evidence on record. Mr. Usgaonkar, submits that despite the receipt of the statutory notice, tenant, failed to pay or tender "such arrears" which were admittedly due and payable by the tenant to the landlord. Mr. Usgaonkar, submits that expression, that "such arrears", reference to the arrears for the period of three months if not four months as demanded by the statutory notice. He submits that clearance of arrears for only one out of the three months, is not sufficient to wipe out cause of action again accrued in favour of the landlord to seek eviction on the ground of arrears of rent. He submits that tenant wasted almost 20 years by insisting upon benefit of 22(3) despite the fact that tenant had availed such benefit wrongly on two occasions. Mr. Usgaonkar, points out that benefit under Section 22(3) can be availed only once in terms of proviso to Section 22(3). He submits that the default to pay or tender the rent on the part of the tenant was without reasonable cause and the Administrative Tribunal, upon appreciating the material on record in the correct perspective has rightly denied the benefit of Section 22(4) to the tenant. Mr. Usgaonkar, submits that this Court in exercise of its supervisory jurisdiction may not interfere on the behest of the petitioner/tenant, who is established to be a habitual defaulter and the cantankerous tenant. Mr. Usgaonkar has relied upon the decision of the Apex Court in the case of *Atma Ram VS Shakuntala Rani*, (2005) 7 SCC 211.

12. The rival contentions now fall for my determination.

13. Section 22 of the Rent Control Act reads thus:- "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 - 12[(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) that the tenant has without the written consent of the landlord-

(i) transferred his right under the lease or sub-let the entire building or any portion thereof, or

(ii) used the building for a purpose other than that for which it was leased; or

(c) that the tenant has committed such acts of damage as are likely to impair materially the value or utility of the building; or

(d) that the tenant has been guilty of such acts and conducts which are a nuisance to the occupiers of other portions of the same building or of buildings in the neighbourhood;

Explanation:- For the purpose of this clause, "nuisance" shall be deemed to include any act which constitutes an offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(e) that the tenant of a dwelling house has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted a residence 13[within an area of five kilometers radius for the outer limits of the city or village as the case may be, where such dwelling house is situated]; or

(f) that the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause; or

(g) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bonafide; 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 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."

[Emphasis supplied]

14. In this case, the landlords by notice dated 3.9.1980 called upon the tenant to pay arrears of rent from May, 1980 to August, 1980. Even if we proceed on the basis that rent for the month of August, 1980 had not become due and therefore, was not legally recoverable on 3.9.1980, the fact remains that rents for the month of May, 1980 to July, 1980 were outstanding and were demanded by the landlords vide notice dated 3.9.1980. There is no dispute that such notice was received by the tenant.

15. The case of the tenant is that after the receipt of the notice dated 3.9.1980, rent of Rs.250/- for the month of May, 1980 was paid by the tenant to the landlords even before the landlords could institute Eviction Proceedings on 28.10.1980. On this basis tenant contends that notice dated 3.9.1980 stands discharged and no further eviction petition was competent on the basis thereof. The tenant contended that landlords were required to serve a fresh notice alleging fresh defaults and calling upon the tenant to pay the arrears, in case, the landlord desire to maintain an Eviction Proceedings on the ground of non payment of arrears of rent. It is not possible to accept such contentions.

16. Section 22(2)(a) of the Rent Control Act, no doubt, affords the tenant an opportunity to ward off eviction proceedings by paying or tendering arrears of rent as are legally recoverable from him within 30 days from the receipt of registered notice served on him by the landlord for such arrears. However, in order to avail the benefit of this provision, it is necessary that the tenant pays or tenders "such arrears of rent as are legally recoverable from him." On the date of the notice dated 3.9.1980, admittedly, the tenant was in arrears for the months of May, June and July, 1980. The expression "such arrears of rent as are legally recoverable from him" would therefore include the payment for the three months and not merely arrears for one month as contended by the tenant. Admittedly, the tenant in the present case failed to pay or tender "such arrears of rent" i.e. arrears for the month of May, June and July, 1980. In such circumstances, it is not possible to accept the tenant's contention that notice stood discharged, or that the eviction proceedings filed on the basis of such notice were incompetent proceedings or that some fresh notice was necessary to maintain the eviction

proceedings.

17. If the interpretation suggested by the tenant is to be accepted, the same would amount to rewriting the provision of Section 22(2) (a) of the Rent Control Act. Besides, the same would also amount to conferring upon the tenant an advantage which the legislature neither intended nor expressed in the legislative provision. Such an interpretation would be extremely onerous and cumbersome in so far as the landlords are concerned. Based upon such interpretation, a cantankerous tenant would pay only part of the arrears and thereby keep postponing the cause of action for institution of the eviction proceedings. Legislature has therefore, advisedly used the expression "such arrears of rent as are legally recoverable." This expression is to be read along with other provisions which refer to arrears in payment of rent for a total period of three months. Therefore, if the tenant wishes to avoid the eviction proceedings on the ground of non-payment of rent, the tenant is required to pay or tender such arrears of rent as are legally enforceable from him within 30 days from the date of the receipt of the registered notice served on him by the landlords. The eviction proceedings cannot be avoided by making some part payment as has been done in the present case. Accordingly, it is not possible to accept the submission of Mr. Desai on the interpretation of Section 22(2) (a) of the Rent Control Act.

18. Mr. Desai, submits that since, the Rent Control Act is a beneficial legislation enacted for the benefit of the tenant, a liberal interpretation is warranted. Mr. Desai, has relied upon the following decisions in support of this proposition :- a. Shams under Kaka Talkar Since deceased thorough his legal heirs Vs. Rent Controller and ors., 1996(4) Bom C. R. 39,

b. Damodar Caxinata Naique Vs Alvaro Dos Remed Furtado, 1997(4) ALL MR 50,

c. H. Shiva Rao and anr. VS. Cecilia Pereira and ors., AIR (1987) 1 SCC 258.

19. There is no dispute about the general propositions in the aforesaid decisions. However, the question of liberal interpretation would arise when there is ambiguity in the legislative provision. In this case, there does not appear to be any ambiguity in the legislative provision. Besides, the rent legislations confer certain benefits upon the tenant subject to compliance with certain conditions. Insofar as such compliances are concerned, normally, there has to be strict compliance.

20. In E. Palanisamy Vs. Palanisamy; (2003)1 SCC 173, the contention, similar to that now raised by Mr. Dessai advocating liberal construction was disposed of by following observations :- "The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains expression provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by

step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh Vs. Ganapat Ltd. and another* and *M. Bhaskar Vs. J. Venkatarama Naidu*. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. subsections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference."

[Emphasis supplied]

21. The aforesaid decision was cited with approval in the later case of *Atma Ram Vs. Shakuntala Rani*; (2005) 7 SCC 211. Upon consideration of the several earlier decisions, the Hon'ble Supreme Court has held that it has been consistent view in the interpretation of Rent Control legislations, that if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with the condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

22. The petitioner, in the present case, has virtually exploited the beneficial provisions of the Rent Control Act and managed to drag on the proceedings for eviction for almost 37 years. This is after the petitioner availed the benefit of Section 22(3) on two occasions, when in fact, the law permits such benefit only on one occasion. The liberal interpretation advocated by Mr. Dessai, is not a licence for the petitioner-tenant to avoid compliance with the provisions of the said Act and yet insist that Eviction Proceedings against him ought to be dismissed. As held in *E. Palanisamy (supra)* and *Atmaram (supra)*, if the petitioner-tenant wishes to take advantage of the beneficial provision under the Rent Control Act, he must comply with the requirements of the Rent Control Act. Admittedly, in this case, the tenant despite the receipt of notice dated 03/09/1980 and despite the admitted fact that the tenant was in arrears for the months of May, June and July, 1980, failed to pay or tender such arrears i.e. the arrears for the three months, within a period of 30 days from the date of receipt of notice. In such circumstances, the petitioner-tenant cannot be permitted to contend that the Eviction Proceedings initiated by the landlords were incompetent or that some fresh notice was required to be issued, before such

Eviction Proceedings could be initiated.

23. In the context of benefit under Section 22(4) of the Rent Control Act, Mr. Dessai may be right in his submission that there is material difference between the provisions of Section 22(3) and 22(4) of the Rent Control Act. Even where a tenant may have previously availed the benefit under Section 22(3) of the Rent Control Act, the tenant may be entitled to the benefit under Section 22(4) of the Rent Control Act, if the tenant is in a position to satisfy the rent Controller that default to pay, tender or deposit rent was not without reasonable cause. However, in the present case, the submission of Mr. Dessai that the Administrative Tribunal has denied the tenant benefit of Section 22(4) of the Rent Control Act solely because the tenant had availed the benefit under Section 22(3) of the Rent Control Act on two previous occasions, is not correct and deserves no acceptance.

24. If the impugned judgment and order is examined carefully, it is clear that Tribunal, has not declined the tenant the benefit under Section 22(4) on the ground that the tenant had already availed benefit under Section 22(3) on two occasions. But rather, Tribunal upon detailed examination of material on record has held that the tenant is disentitled to the benefit under Section 22(4) of the Rent Control Act because the tenant's default to pay or tender or deposit the rent could not be held to be "not without reasonable cause". The tenant, cannot pick up some stray sentence or observations from the impugned judgment and order and contend that denial of benefit under Section 22(4) has been on the ground that the tenant had earlier availed the benefit under Section 22(3) of the Rent Control Act on two occasions.

25. The Rent Controller, in his judgment and order dated 16.10.2002, without application of mind as to whether the defaults on the part of the tenant were not without reasonable cause, had extended the benefit of Section 22(4) to the tenant. In doing so, Rent Controller, had completely ignored overwhelming material on record, which established that there was really no reasonable cause whatsoever for the defaults. The recording of satisfaction by the Rent Controller, was clearly without advert to the relevant parameters and the overwhelming material on record. The Rent Controller, by way of mere ipse dixit had extended the benefit of Section 22(4) to the tenant. The entire discussion on this aspect in the judgment and order dated 16.10.2002 reads thus:- "The matter was processed accordingly and the respondent came forward with his justification that there was a lapse on his part in payment of rent of the suit premises which be attributed to the sickness of his daughter. The fact that he was not able to look after his business for some period and was in financial tensions during the said period, cannot be overlooked. This deserves the benefits u/s 22(4) to the respondent. He has, however cleared up all the arrears of rent and as such no grounds have now remained for proceeding against the respondent u/s 22(2)(a) of the Rent Act. Even the Hon'ble High Court of Judicature, Panaji Bench has held that wherever an eviction application is filed against a tenant on the

grounds of non payment of rent, the tenant should be given an opportunity to clear the arrears of rent and upon his clearing the arrears of rent, the eviction application should be disposed of accordingly."

26. The Administrative Tribunal, in the impugned judgment and order has examined the material on record in great detail. Upon due consideration of the evidence and after applying correct parameters, Tribunal, has reversed the Rent Controller and declined the tenant the benefit under Section 22(4) of the Rent Control Act. Relevant findings/observations on this aspect read thus:- The Ld. Rent controller on direction of this Tribunal proceeded with the matter to consider the reply to show cause filed by the Respondent to find out if the tenants default to pay, tender or deposit rent was not without reasonable cause, as provided under Section 22(4) of the Rent Control Act. The Respondent in his reply has claimed the ground of his daughters sickness as the cause for the default caused in depositing the rents and the learned Rent Controller, by observing that, on account of the sickness of his daughter the Respondent was not able to look after his business for some period and was in financial tensions during the said period, has arrived at conclusion that the respondent deserves benefits u/s 22(4). However, the learned Rent Controller has ignored the statements made on admission by the Respondent in his deposition which prove the contrary so much so that he has admitted at age 5 of this cross examination that it is true that he is habitual defaulter in payment of rent in respect of the suit premiss. It is undisputed that the earlier both cases were filed against the Respondent for non-payment of rent. According to the Respondent his daughter's sickness was only reason for non-payment of rent. However, it is important to note that the Respondent has not produced any valid evidence to prove alleged sickness of his daughter. As rightly submitted by Shri Narvekar even assuming without admitting that the Respondents daughter was sick as alleged, it was not a cause at all for the respondent for defaulting the payment or deposit of rent for the reason that , in his cross examination at pg.4 the Respondent has stated that his restaurant was running even during the sickness of his daughter. He states that all the expenditure regarding the suit restaurant and the business such as payment of electricity bill, salary of workers, water bills etc. were regularly paid during the period of his daughter's sickness. The electricity bill only was amounting to Rs.700/- p.m (minimum) and the water bill was about Rs.400/- p.m. At that time. The expenditure towards the salary of the workers was amounting to Rs.2,500/- per month at that time. Further at para 5 of cross, it is stated by the Respondent that at the time of his daughters sickness, he was getting a net profit of about Rs.700/- to Rs800/- per day from the business of the suit restaurant. Thus, the Respondents average net profit p. m. during the period of sickness of his daughter which is in late sentient and early eighties is Rs.21,000/- to Rs.24,000/- per month and he as been regularly paying the electricity bill, water bill and salary of workers which totally amounted to Rs.3,600/- p. m. The rent of the suit premises is admittedly Rs.250/- per month. If the Respondent whose net profit during the period of sickness of his daughter

was admittedly Rs.21,000/- to 24,000/- and he could regularly pay during that time, the electricity bill of Rs.700/- water bill of Rs.400/- and salary of worker of Rs.2,500/- per month, his case that he could not pay the rent of Rs.250/- p.m on account of sickness of his daughter cannot be a true answer for considering the same as reasonable cause under Section 22(4). If the Respondent could pay regularly Rs.3,600/- the payment of another Rs.250/- towards rent cannot be considered as was difficult to pay due to the financial tension as observed by the Ld. Rent Controller. From his net profit of Rs.21,000/- to Rs.24,000/- from the restaurant business during the relevant period, the Respondent had more than 15,000/- every month at his disposal for treatment of his daughter and in evidence it is brought by him that he had to take his daughter thrice to Bombay in 1984 and once in 1982. If as stated by the Respondent, there was default in payment of rent on account of his financial position due to sickness of his daughter, there have had to be defaults in payment of electricity bills, water bills and wages of workers which amounts are bigger compared to rent of suit premise which is Rs.250/-. That apart, admission of the Respondent that he is habitual defaulter and the earlier two cases were also filed against him on the same grounds, give a clear indication of the Respondent being a habitual and cantankerous defaulter who has defaulted the payments intentionally to harass the appellant." [Emphasis supplied]

27. Mr. Desai, however submits that material on record clearly bears out that the daughter of the tenant was sick during the relevant period and therefore, finding recorded by the Tribunal to the contrary is vitiated by perversity. Mr. Desai, also submits that there was no admission on the part of the tenant that he is habitual defaulter and this is the case of misreading the evidence on record. Mr. Desai submits that this is a case of incorrect recording of evidence where, denial of the tenant has been misconstrued or mistyped as acceptance. Mr. Desai, submits that it is inconceivable that tenant who is litigating for so many years admits that he is habitual defaulter.

28. There is some material on record to indicate that daughter of the tenant was sick. However, if the evidence in this regard is perused then, it appears that daughter, on account of her sickness was required to be taken to Bombay on two to three occasions between the year 1982 to 1984. The tenant had made a bald statement that his daughter was sick from the year 1978. However, material on record is mainly for the period between 1982 and 1984. This is relevant because the defaults in the payment of rent was for the period between May, 1980 to July, 1980. There is really no evidence to suggest that there was any reasonable cause for such default during the said period.

29. That apart, Tribunal, has correctly held that sickness of the daughter did not prevent the tenant from carrying on restaurant business. During this period, the tenant, had admitted that he was getting net profit of ₹700/- to ₹800/- per day which works out to ₹21,000/- to 24,000/- per month. During all these period the tenant had admitted that he was regularly paying dues towards electricity of

approximately of ₹700/- per month, water bill of approximately of ₹400/- per month and salary of workers amounting to ₹2500/- per month. Despite all this, tenant, however, claims that there was reasonable cause not to pay monthly rent of ₹250/- for the user of the suit premises. Such excuse can, therefore, not be regarded as any reasonable cause. The Tribunal in such circumstances, has very, rightly has held that the tenant was dis-entitled to the benefit under Section 22(4) of the Rent Control Act.

30. Mr. Dessai failed to elaborate, what according to him, is the distinction between "reasonable cause" and "sufficient cause". However, there is really no necessity to go into the semantics. From the perusal of the impugned order, it is clear that the Administrative Tribunal has considered whether or not the tenant's default to pay, tender or deposit the rent was without reasonable cause. Further, the material on record also bears out that the tenant's default in the present case, was without reasonable cause. Black's Law Dictionary (6th Edition) defines the term "reasonable", as follows :- "Reasonable - Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. Thinking speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable moderate, tolerable. Cass V. State, 124 Tex. Cr. R. 208, 61 S.W.2d 500."

31. In the fact and circumstances of the present case, the material on record bears out that the cause shown by the tenant for the admitted defaults was neither fair, nor proper nor just nor suitable under the circumstances. Accordingly, the Tribunal was quite right in holding that the tenant was not entitled to the benefit under Section 22(4) of the Rent Control Act.

32. In order to supplement the aforesaid main finding, Tribunal, has also taken note of the conduct of the tenant. In this context there are certain observations to the effect that the tenant was habitual defaulter and has availed the benefit of Section 22(3) on two occasions, when in fact, the law permits such benefit only on one occasion. The record bears out that and even otherwise it is an admitted position that the despite receipt of the statutory notice dated 3.9.1980 demanding the arrears for a period of more than 3 months, the tenant, for the reasons best known to him chose to clear the rent only for one month. All these facts do establish that the tenant was habitual defaulter carrying the impression that his eviction through the judicial process was a mirage which the landlords were unsuccessfully pursuing for last almost for four decades. To such a tenant, the Tribunal, rightly declined the benefit of Section 22(4) of the Rent Control Act.

33. Therefore, even we have to proceed on the basis that tenant's daughter was sick or that there was no admission on the part of the tenant that he was habitual defaulter, nevertheless the material on record, independent of such so called admissions bears out that the tenant was a habitual defaulter, or a cantankerous tenant. Material on record also bears out that there was absolutely

no reasonable cause for default to pay, tender or deposit the rent and consequently, benefit under Section 22(4) of the Rent Act was rightly denied to the tenant.

34. Mr. Dessai submits that burden of proving the eviction under Section 22(2) (a) of the Rent Control Act is upon the landlords. He submits that in the present case, the landlords have not stepped in to the witness box, but only a Power of Attorney has deposed on their behalf. Mr. Dessai relied upon the decision in the case of Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd; 2005(2) SCC 217, to submit that a Power of Attorney cannot depose in respect of a matter, which only the principal can have personal knowledge. It is not possible to accept this submission of Mr. Dessai for several reasons referred to hereafter.

35. In this case, there was really no serious dispute as regards the facts. The tenant had admitted to the previous defaults as also to the default, which afforded cause of action to the landlords to institute the present Eviction Proceedings. Only a legal contention was raised with regard to interpretation of the provisions of Section 22(2)(a) of the Rent Control Act. This is also not a case where the Power of Attorney, who is incidentally, the son of one of the landlords, has deposed to some facts, which were within the exclusive personal knowledge of the landlords alone. Further, in order to avail the benefit under Section 22(4) of the Rent Control Act, the tenant is required to admit that he is in default and thereafter, satisfy the Rent Controller that such default was not without reasonable cause. In this case, except for the contention based upon the interpretation of Section 22(2)(a) of the Rent Control Act, the tenant has not factually disputed that he defaulted in the payment of arrears of rent. The onus of establishing that such default was not without reasonable cause, was, therefore, upon the tenant. Such onus, the tenant has failed to discharge. Upon examination of the matter, from this perspective as a whole, it is clear that the principles in Janki V. Bhojwani (supra), are really not attracted to the fact and circumstances of the present case.

36. On the aspect of default as contemplated under Section 22(2)(a) of the Rent Control Act, in fact, there are concurrent findings of fact recorded by the Rent Controller and Administrative Tribunal. The Rent Controller, however, exceeded its jurisdiction or in any case committed a manifest error in extending the benefit of Section 22(4) to the tenant. In doing so, as noted earlier, the Rent Controller excluded from consideration vital and material evidence. The Rent Controller, in fact, recorded no reasons for extending such benefit to the tenant. In such circumstances, the Administrative Tribunal was justified in interfering with the order of the Rent Controller and recording a finding of fact that the default on the part of the tenant was without reasonable cause. The findings of fact recorded by the Administrative Tribunal are amply borne out by the material on record. This Court, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, does not exercise any appellate jurisdiction. The findings recorded by the Administrative Tribunal are reasonable, logical and backed by the

evidence on record. Applying, therefore, the law laid down by the Hon'ble Supreme Court and this Court in the matters of interference with the findings of fact, there is no case made out to warrant any interference with the impugned order. [See : 1) S. P. Deshmukh Vs. Shah Nihal Chand Waghajibai Gujarati; (1977)3 SCC 515, 2) M/s. India Pipe Pitting Co. Vs. Fakruddin M.A. Baker and another; (1977)4 SCC 587, 3) Mohammad Shahnawaj Akhtar and another Vs. 1st ADJ, Varanasi and others; (2002)9 SCC 375, 4) Dudhasingh Bala Chavan Vs. Murlidhar Gyanba Kudale; 2009(3) Mh. L. J. 571, 5) Celina Coelho Pereira (Ms) and others Vs. Ulhas Mahabaleshwar Kholkar and others; (2010)1 SCC 217, 6) Kasthuri Radhakrishnan and others Vs. M. Chinniyan and another; (2016)3 SCC 296, (7) Gulshera Khanam Vs. Aftab Ahmad; (2016)9 SCC 414].

37. Mr. Dessai finally attempted to invoke equity by submitting that the tenant has been regular in payment of rent for last 36 years during the pendency of the Eviction Proceedings against him. In the facts and circumstances of the present case, the tenant can hardly invoke any equity in his favour. The circumstance that the tenant has paid/ deposited the rents for the last 36 years during the pendency of the Eviction Proceedings against him is hardly a ground to upset the order of the Administrative Tribunal. Under Section 32 of the Rent Control Act, a duty is cast upon the tenant to deposit the rent in case the tenant desires to contest the Eviction Proceedings. The deposit of rent, on the pain of stoppage of proceedings or striking off defence, is hardly a circumstance, which can be cited by the tenant to invoke any equity. Besides, in this case, as noted earlier, the tenant had availed the benefit under Section 22(3) of the Rent Control Act on two occasions even before the present Eviction Proceedings were instituted by the landlords on 28/10/1980. This is despite the fact that the proviso to Section 22(3) of the Rent Control Act makes it clear that no tenant shall be entitled to the benefit under Section 22(3), more than once. Despite such clear legal position, the tenant in the present proceedings, once again insisted upon the benefit under Section 22(3) of the Rent Control Act and on basis of such insistence, dragged on the Eviction Proceedings for almost 20 years on this point alone. The entire proceedings have taken almost 40 years upto now. Such conduct on the part of the tenant disentitles the tenant to seek any relief in equity, having failed to make out any case in law or on facts.

38. Accordingly, this petition fails. Rule is discharged. Interim order is vacated.

39. There shall be no order as to costs.

40. After this order was pronounced, Ms. Desai, learned Counsel for the petitioner applied for extension of interim relief by period of 8 weeks from today. Mr. Usgaonkar, learned Senior Counsel opposes the request pointing out that proceedings have taken almost four decades and even, the respondent no.1 is 94 years old. Taking into consideration that the interim relief has been in operation since the year 2012, the same is extended by 8 weeks from today subject to the petitioner filing the usual undertaking in this Court within a period of two weeks from today. Undertaking to state that the petitioner is in occupation of the suit

premises and that the petitioner will not transfer, part with possession or create any third party right in the suit premises. The undertaking also to state subject to any orders from the Hon"ble Supreme Court, the petitioner shall, vacate the suit premises and handover peaceful possession of the same to the respondent, no sooner the eight weeks period expires. In case no such undertaking is filed within two weeks from today, the petitioner shall not have benefit of continuation of the interim relief.