
(2000) 01 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 326 of 1990

Shri Datta Anant Ghadi

APPELLANT

Vs

Guilhermina Silveria and others

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 21, 22(2), 32(4)
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 — Rule 9

Citation : (2000) 3 ALLMR 626 : (2000) 2 BomCR 862 : (2000) 4 MhLj 117

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

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

Judgement

R.M.S. Khandeparkar, J.—This petition arises from the judgment and order dated 22-11-90 passed in Eviction Appeal No. 13/88 by the Administrative Tribunal. By the said order, the appeal of the petitioner against order dated 26-4-88 of the Additional Rent Controller, Ponda, Sub-Division, Ponda was dismissed. The Rent Controller on his part had allowed the application filed by the respondent u/s 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called the said Act) for stopping all proceedings in eviction proceedings and to direct the petitioner to hand over the vacant possession of the suit premises to the respondent.

2. The undisputed facts in brief are that the petitioner is the tenant in respect of the premises bearing house No. 267 situated in the property known as "Tank alias Pissem" situated in the village of Candola belonging to the respondent No. 1. The respondent No. 1 herein filed an application for eviction of the petitioner on the ground of non-payment of rent. As the jurisdiction to entertain the said application, at the relevant time vested in the Additional Rent Controller at Margao, the same was registered in the office of the Additional Rent Controller, Margao as Case No. BLDG/78/ARC-III/87. The notice in respect of the said

application was received by the petitioner on 10-7-87. As per the said notice, the petitioner was required to appear before the Additional Rent Controller at Margao to answer the said application on 21st August, 1987. Meanwhile, the jurisdiction to deal with the matter arising under the said Act within the taluka of Ponda was assigned to the Additional Rent Controller at Ponda and consequently all the cases arising under the said Act from the taluka of Ponda were assigned to the Additional Rent Controller at Ponda including the case in hand as the same was in relation to the premises situated at Candola which lies in the taluka of Ponda. Such assignment was made consequent to the Notification No. 16/15/87-RD dated 3-8-1987 which came into force from 16-8-87. Consequent to the assignment of the matter in question to the Additional Rent Controller at Ponda, necessary notice was issued to the petitioner for his appearance before the said authority and the same was received by the petitioner on 7-11-87, consequent to which the petitioner was required to appear before the said authority on 2nd December, 1987. On the very day i.e. on 2nd December, 1987, the petitioner filed an application seeking leave of the Additional Rent Controller to deposit all the arrears of rent as claimed by the respondents and the same was allowed and accordingly the amount was deposited by the petitioner.

3. Some more facts which are relevant for the decision and which are disclosed from the records are that the petitioner, pursuant to the receipt of a copy of the application dated 2-12-87 filed by respondent No. 1 u/s 32(4) of the said Act, had filed a reply stating therein that he had approached the office of the Additional Rent Controller at Margao on 21st July as well as 22nd July of the year 1987 pursuant to the receipt of the notice of the Additional Rent Controller at Margao in relation to the application for eviction filed by the respondent No. 1 herein and on both the occasions he had noticed that the Presiding Officer of the Court of the Additional Rent Controller was not available in the office and the Clerk of the Court had informed the petitioner that in view of the transfer of jurisdiction to the Additional Rent Controller at Ponda to deal with the matters relating to the cases in the taluka of Ponda, his case would be transferred to Ponda and necessary notice would be received by the petitioner from the Additional Rent Controller at Ponda and therefore the rent amount could be deposited in the said office of the Additional Rent Controller at Ponda. The petitioner had also categorically stated that prior to institution of the eviction proceedings against the petitioner on the ground of non-payment of rent the respondent/landlord had not issued any notice as is otherwise required to be issued to a tenant claiming the arrears of rent and giving him opportunity to pay the same within thirty days from the receipt of such notice and proceedings were instituted without complying with the mandatory provisions of section 22(2)(a) of the said Act and, therefore, the entire proceedings are ab initio bad in law.

4. Chapter V of the said Act deals with the matters pertaining to eviction of tenants and the control over the same. Section 21 thereunder provides that a tenant shall not be evicted except otherwise provided under the provisions of the said Chapter V of the said Act. Section 22 deals with the grounds of eviction of a

tenant. Sub-section (1) thereof, provides that a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. Sub-section (2) enumerates the various grounds for eviction of a tenant and provides that if the Controller, after giving the tenant reasonable opportunity of showing cause against the application is satisfied about the ground of eviction being made out, 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 the order rejecting the application. Clauses (a) to (g) of sub-section (2) of section 22 of the said Act enumerates the grounds for eviction. Clause (a) of the said sub-section provides that the tenant who is in arrears of payment of rent due by him in respect of the building for a total period of three months fails to pay or tender such arrears of rent as are legally recoverable from him within thirty days from the date of receipt or of refusal of the registered notice served upon him by the landlord for such arrears, then the Controller being satisfied about the said ground and the tenant having failed to show cause against the said ground, would be liable to be directed to put the landlord in possession of the building. In other words, section 22(2)(a) does provide that failure to pay rent for three months will give cause for eviction of the tenant from the rented premises on application being filed for his eviction by the landlord before the Controller. However, it also stipulates certain pre-conditions for enabling the landlord to seek a favourable order of eviction against a tenant on account of default by the tenant in payment of rent for three months. The pre-conditions are that the default should be for a period of minimum three months, the landlord must issue a notice to the tenant demanding such arrears of rent, the tenant must either refuse to accept the notice or must fail to pay the arrears within thirty days from the receipt of such notice and that such notice must be issued by registered post. Sub-section (2) of section 22 as already seen above clearly provides that the Controller must be satisfied of the ground being made out by the landlord for eviction of a tenant and this satisfaction should be arrived at only after issuing a notice to show cause against the ground made out by the tenant. It, therefore, follows that in order to enable the Controller to issue notice of an application calling upon the tenant to show cause against his eviction on the ground of non-payment of rent, it is necessary that the landlord should make out a necessary case in that regard as contemplated u/s 22(2)(a) of the Act in the application seeking the relief of eviction of a tenant on the ground of non-payment of rent. In other words, compliance of the pre-conditions for seeking eviction of a tenant specified in Clause (a) of sub-section (2) must be apparent on the face of the application for eviction. This means that the application should disclose the fact regarding default of minimum three months as regards the payment of rent, issuance of notice by registered post by the landlord demanding such arrears and either failure to pay such arrears by the tenant or refusal of such notice. The pleadings disclosing these facts must be apparent on the face of the application seeking eviction of the tenant.

5. The above position in law is further clear from the provisions contained in

section 44 read with Rule 9 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (hereinafter called the said Rules). Section 44(1) of the said Act provides that subject to the provisions of the said Act, the procedure to be followed by the Controller in inquiries shall be as such may be prescribed. Rule 9(1) of the said Rules provides that save as expressly provided by or under the Act or the said Rules, all inquiries and other proceedings before the Controller shall be commenced by an application which shall contain the particulars enumerated in the said Rules. The particulars so enumerated include short description and location of the building in respect of which the application is filed as well as the circumstances out of which the cause of action has arisen. The application should also disclose specific prayer of the applicant. The list of the applicant's documents as well as of witnesses is to be appended to the application. In other words, disclosure of all the facts giving rise for cause of action to file the application for eviction of a tenant on the ground of non-payment of rent is a must and mandatory requirement of section 22(2)(a) of the said Act.

6. The provisions of law contained in section 22(2)(a) therefore discloses that the Controller can invoke his jurisdiction to summon the tenant to show cause against his eviction on the ground of non-payment of rent only when the landlord discloses all the ingredients of the ground for eviction mentioned in sub-section (2)(a) of section 22 in the application for eviction by the landlord and not otherwise. An application which does not disclose the necessary particulars and facts regarding the period of default in payment of rent, issuance of necessary notice, failure on the part of the tenant to comply with the registered notice within thirty days from the receipt of such notice or refusal of such notice by the tenant, will not entitle the Controller to invoke the jurisdiction for issuance of show cause notice to the tenant in terms of sub-section (2)(a) of section 22.

7. Bearing in mind, the provisions of law contained in section 22(2)(a) of the said Act, if one peruses the original application filed by the respondent/ landlord before the Rent Controller, it is apparent that the landlord did plead the fact regarding failure of the petitioner/tenant to pay rent for three consecutive months. The pleadings in that regard in para 7 read that : "The cause of action arose on 1st day of November, 1986 when the tenant failed to pay the rents for three consecutive months and this cause of action is of recurring nature." However, the pleadings nowhere discloses that pursuant to such default on the part of the tenant to pay the rent for consecutively three months, whether the landlord had sent any notice as required u/s 22(2)(a) of the said Act, whether such notice was refused by the tenant or whether the tenant had failed to comply with such notice within the period of thirty days. There is not a word regarding any of these facts in the pleadings in the application. It is true that Shri Kantak, learned Advocate for the respondent did try to point out the fact of reference to notice dated 30th April, 1987 with A.D. sent to the petitioner in para 12 of the said application. Indeed, para 12 of the application reads: "The applicant hereby relied upon the notice dated 30-4-87 along with A.D. sent to the applicant". It is

to be noted that the eviction application was filed in the Court on 12th June 1987. The application nowhere discloses that the notice dated 30th April, 1987 was sent on any particular day nor it discloses as to whether the same was received by the opponent or not, nor it discloses whether the petitioner failed to comply with the said notice or not. Considering the fact that the notice is dated 30th April, 1987 and the application for eviction being filed on 12th June, 1987, there is no scope to presume that the notice was received by the tenant and that the tenant had failed to comply with the notice within a period of thirty days prior to the filing of the application, apart from the fact that such an inference cannot be drawn even otherwise in the absence of any pleadings in that regard. It is therefore clear that in the absence of necessary pleadings disclosing necessary particulars giving rise to cause of action to seek eviction of the tenant on the ground of non-payment of rent as contemplated u/s 22(2)(a) of the said Act, there was no material on record to satisfy the Rent Controller to issue necessary show cause notice requiring the petitioner to show cause against the application being allowed. The proceedings for eviction having been allowed to be initiated by issuing the notice on the basis of the application which does not disclose the necessary particulars to satisfy the Rent Controller for issue of show cause notice u/s 22(2)(a) of the said Act, the whole proceedings are vitiated and bad in law. On that count alone, the entire proceedings are liable to be quashed and set aside.

8. Shri S.S. Kantak, appearing for respondent No. 2 submitted that as far as the point of absence of notice prior to institution of proceedings is concerned, no such point was raised by the petitioner either before the Rent Controller in the reply to the summons issued pursuant to the application u/s 32(4) or in the appeal filed before the Administrative Tribunal, and therefore the petitioner is not entitled to seek any relief on the said ground nor the petitioner is entitled to raise such a ground for the first time in the writ petition. He further submitted that the petitioner has not even filed his reply to the original eviction application and he can very well raise such a point in his reply before the competent authority. To permit the petitioner to raise this point in writ petition will result in great prejudice to the respondent. Considering the provisions contained in section 22(2) (a), it cannot be said that the landlord acquires cause of action for eviction of his tenant on account of non-payment of rent unless registered notice as required under the said provision is issued to the tenant and the tenant fails to pay the arrears or refuses to accept such notice. That apart, the fact regarding issuance of notice and failure to pay the arrears of rent in terms of the provisions contained in section 22(2) are to be specifically pleaded in the application for eviction. This is so because the Rent Controller cannot satisfy himself about compliance of procedure specified u/s 22(2)(a) of the said Act by the landlord in the absence of necessary materials in that regard being disclosed in the application for eviction. In order to enable the Rent Controller to entertain such application by the landlord, the facts stated in the application should disclose that the landlord has issued registered notice in terms of such provisions in the

said Act and the tenant has failed to pay the arrears of rent inspite of service of such notice or that the tenant has refused to accept such notice. As already seen above, no such averments are to be found in the eviction application filed by the respondent in the case in hand. The petitioner has specifically raised the point in the petition. The submission of the learned Advocate for the respondent that allowing the petitioner to raise this point in the writ petition in the absence of such point being raised before the Rent Controller would result in prejudice to the respondent is devoid of substance inasmuch as the point raised goes to the root of the case and pertains to the jurisdiction of the Rent Controller to entertain the very proceedings for eviction of a tenant on the ground of default in payment of rent by the tenant. Unless the respondent who had initiated the proceedings before the Rent Controller is able to disclose that the mandatory provisions of section 22(2)(a) of the said Act were complied with by the respondent before initiating the proceedings and the petitioner having been made to face the proceedings for his eviction, which are ab initio bad in law, for no fault on his part as regards the illegality of the proceedings itself, it cannot be said that allowing the petitioner to raise the said point in the writ petition would result in prejudice to the respondent. Prejudice, if any, has certainly been caused to the petitioner for having been compelled to contest the proceedings which are not legally maintainable.

9. Even otherwise, the orders passed by the Addl. Rent Controller and the Administrative Tribunal u/s 32(4) of the said Act on merits are not sustainable. Undisputedly, the petitioner herein had clearly explained the cause for non-payment of rent or deposit of arrears of rent with the Addl. Rent Controller at Margao. It is also a matter of record that immediately on receipt of the notice from the Addl. Rent Controller at Ponda, the petitioner had approached the Addl. Rent Controller with the application seeking leave to deposit the rent within the stipulated time. The facts disclosed in the application u/s 32(1) by the petitioner have not been denied by the respondents. The conclusions sought to be drawn by the Rent Controller and confirmed by the Tribunal are not borne out from the records and line records do not disclose any basis for arriving at such conclusions. In other words, the findings are without any justification and materials on record and such findings cannot be sustained and order passed on the basis of such findings is liable to be quashed and set aside.

10. Perusal of the reply to the application u/s 32 of the said Act discloses that the petitioner did approach the office of the Addl. Rent Controller at Margao within the period of thirty days from the receipt of the notice of the eviction proceedings. It is also matter of record that from 15th August, 1987 jurisdiction of the Addl. Rent Controller at Margao to deal with the matters arising under the said Act in respect of the said premises within the taluka of Ponda was transferred to the Addl. Rent Controller at Ponda. In other words, from 15th August, 1987 the Addl. Rent Controller at Margao, had no jurisdiction to deal with the matter and the jurisdiction was specifically entrusted with the office of the Addl. Rent Controller at Ponda. It is a matter of record that within the period

prescribed for deposit of the rent, the petitioner approached the Addl. Rent Controller at Ponda on receipt of notice of eviction proceedings against him from the office of the Addl. Rent Controller, Ponda. Being so, there is sufficient explanation placed on record by the petitioner for non-stopping of proceedings as well as allowing him to contest the proceedings.

11. In the result, therefore, the impugned orders cannot be sustained and are liable to be quashed and set aside. The proceedings for eviction initiated against the petitioner without issuance of mandatory notice u/s 22(2)(a) of the said Act also cannot be sustained and are liable to be quashed. Rule is accordingly made absolute in the above terms. There shall be no order as to costs.

12. Petition allowed.