

(2000) 06 BOM CK 0066

In the Bombay High Court

Case No : Letters Patent Appeal No. 5 of 1995

Shri Govind Mahadev Bandekar

APPELLANT

Vs

Smt. P. Cusum @ Jankibai and others

RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22(3), 32(1), 32(4), 45

Citation : (2001) 2 ALLMR 699 : (2000) 4 BomCR 694

Hon'ble Judges : V.C. Daga, J; F.I. Rebello, J

Bench : Division Bench

Advocate : U.S. Kolwalkar, for the Appellant; L.V. Talaulikar, for the Respondent

Judgement

F.I. Rebello, J.—Appellant is original respondent. Respondents 1 and 2 are original applicants. Respondents 1 and 2 filed an application for eviction of the appellant herein on the ground that the appellant was in arrears of rent. By judgment dated 31st October 1985, the Rent Controller held that the appellant was entitled to the benefit under sub-section (3) of section 22 of the Rent Control Act and, therefore, no order of eviction could be passed on the ground sought in the application dated 19th March 1985. Respondents 1 and 2 aggrieved by the order preferred a review before the Rent Controller. The said review was dismissed by order of 15th July 1987. The Rent Controller gave a finding that he could not invoke Order 47, Rule 1 of the CPC and assume to himself the power of review. In these circumstances, he held that the application for review fails. Apart from that he also appreciated the matter on merits and dismissed the review application.

2. Aggrieved, the respondents 1 and 2 preferred an appeal to the Administrative Tribunal which was numbered as Eviction Appeal No. 53 of 1987. Before the Tribunal it was contended that after service of the notice of the appeal on the appellant, he had failed to deposit the rent as contemplated u/s 32 of the Rent

Act and, therefore, he should be evicted u/s 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968. The appellant contended that the appeal was not maintainable. It was also contended that he was advised that as the appeal was incompetent there was no question of depositing the arrears of rent in the Court. The Tribunal found favour with the respondents 1 and 2 and decreed the appeal against the appellant by its order dated 21st June 1990.

3. The appellant preferred a writ petition before this Court which was numbered as Writ Petition No. 226 of 1990/. Before the learned Single Judge, the appellant/petitioner also contended that no order could be passed as the order of the Rent Controller dated 31st October 1985 and the appeal preferred beyond limitation was incompetent. The learned Single Judge in paragraphs 9 and 10 of the judgments purported to reject the said contention and dismissed the petition. Hence, the present Letters Patent Appeal.

4. At the hearing of the appeal on behalf of the appellant it is contended that the orders of the third respondent and the learned Single Judge are liable to be set aside. It is contended that the orders suffer from want of jurisdiction. It is further contended that if there was no properly constituted appeal, the Tribunal would have no jurisdiction to pass any order u/s 32(4) of the Rent Control Act. The learned Single Judge in dismissing the petition in respect of orders without jurisdiction, has failed to exercise the jurisdiction vested in him and, therefore, the order is liable to be set aside.

5. On behalf of the respondents it is contended that the findings given by the third respondent has not been interfered with by the learned Single Judge. It is further contended that the Tribunal had jurisdiction to decide the appeal, notice of which was given to the appellant herein, and to order eviction, if the appellant had failed to comply with the provisions of section 32(4) of Rent Control Act.

6. The main issue that arises in this appeal is whether the Administrative Tribunal was competent and/or had jurisdiction to pass the impugned order dated 21st June 1990. If it had jurisdiction, then it could have proceeded to pass the order. The order of the Rent Controller dismissing the application for eviction filed by respondents 1 and 2 is dated 31st October 1985. u/s 45 sub-section (3), appeal had to be filed within 30 days. That time could be extended if the respondents 1 and 2 had applied for condonation of delay and shown sufficient cause. We do not find anywhere in the records that the Administrative Tribunal condoned the delay. We thereafter find instead of preferring an appeal, the respondent 1 and 2 preferred a review before the Rent Controller. This review was dismissed on 15th July 1987 as being not maintainable.

7. It is at this stage that an appeal was preferred by respondents 1 and 2. In the title it is mentioned that the appeal is preferred against the order dated 15th July 1987. The appeal has been filed on 31st August 1987. However, in the prayer clause apart from seeking quashing and setting aside of the order of 15th July

1987, the respondents 1 and 2 have also sought quashing and setting aside of order dated 31st October 1985. If the application for review is considered, then the appeal, prima facie, would be within limitation.

The question is whether an application for review lay before the Rent Controller ? It is now settled law that the power to review must be conferred. If no such power is conferred, no authority can invoke the jurisdiction under Order 47, Rule 1. The Rent Controller rightly held that the provisions of Order 47, Rule 1 of CPC could not have been availed of by respondents 1 and 2. In these circumstances, he dismissed the application of the respondents 1 and 2 for review. We do not find in so holding that he committed any jurisdictional error.

The respondents 1 and 2 preferred an appeal against this order. If a review was maintainable it would be still possible to contend that the appeal was maintainable. However, as seen earlier, no review lay. The application was dismissed on the ground that no review lay. The appeal against the order of the Controller dated 31st October 1985 was, therefore, clearly barred by limitation.

8. Section 32(1) of the Rent Control Act contemplates that no tenant against whom a proceedings for eviction has been instituted by a landlord under the Act shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority or to prefer any appeal or revisions under this Act unless he pays the landlord or deposits with the Controller or the appellate or revisional authority, as the case may be, all the arrears of rent due in respect of the building. What this section would contemplate is that there must be a properly constituted application before the Rent Controller or the Appellate or Revisional Authority. It is a matter of exercise of jurisdiction. If a petition itself discloses no cause of action, then the Tribunal could not have passed an order u/s 32(4) irrespective of the fact whether the respondent before him had deposited rent or not. The foundation of exercise would be a properly constituted petition. All that the Administrative Tribunal or the Rent Controller has to consider is whether based on the pleadings in the petition if there be any cause of action or whether the appeal was barred by limitation. If the pleadings disclose a cause of action, then only the jurisdiction to pass the eviction order would arise. Insofar as the appeal is concerned, there would be a properly constituted appeal before the authority, if the appeal is filed within the prescribed period of time as set out u/s 45(3). Otherwise there would be no case for the Tribunal to invoke jurisdiction u/s 32(4). Its jurisdiction would flow only after the delay in filing the appeal was condoned. In the instant case we find no such application or any order condoning delay. Therefore, the Tribunal could not have passed an order u/s 32(4) of the Rent Control Act.

9. Though it was contended before the learned Single Judge that the appeal was incompetent and the appellate authority could not have passed the order u/s 32(4), the learned Single Judge held that what was before the appellate authority was the maintainability of the application u/s 32(4) and not the appeal and an order could be passed by the appellate authority. We are afraid we cannot

share the view taken by the learned Single Judge. The foundation or assumption of jurisdiction is that the power of the Controller and first appellate authority flowed from that exercise of jurisdiction. In the instant case the appeal was filed nearly 2 years after the order of the Rent Controller. Mere filing of the review application would not arrest the period for filing the appeal. At the highest the appellate authority could consider if the appellant had shown cause for condoning delay by proceeding in a wrong Court of competent jurisdiction, if an application is made on that count. In the instant case, no such application was made. As already pointed out the appeal was not properly constituted. Once the appeal is not properly constituted any order passed u/s 32(4) is without jurisdiction. Once having said so, the order of the learned Single Judge dated 4th August 1984 and the judgment of the third respondent dated 21st June 1990 are liable to be quashed and set aside.

10. However, we find that the matter has not been dealt on merits. We also find that what the Administrative Tribunal decided was an issue of application u/s 32(4). In the light of that the matter will have to be remanded to the Administrative Tribunal.

In the circumstances, the appeal is allowed in terms of prayer Clause (a). Impugned orders dated 4th August 1984 and 21st June 1990 are quashed and set aside. The matter is remanded to the third respondent to hear the maintainability of the appeal before considering any other aspect of the matter. All other questions are left open to be decided by the third respondent. With the above observations the appeal is disposed of.

In the circumstances of the case, there shall be no order as to costs.

11. Appeal allowed.