

(2000) 03 BOM CK 0110

In the Bombay High Court

Case No : Letters Patent Appeal No. 1 of 1995

Shri Vante Bicrem Gaunso

APPELLANT

Vs

The Administrative Tribunal, Goa and others

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

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

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 — Rule 7

Citation : (2000) 3 ALLMR 540 : (2000) 3 BomCR 342

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

Bench : Division Bench

Advocate : V.P. Thali, for the Appellant; N.N. Sardesai, for the Respondent

Judgement

R.K. Batta, J.—A suit for eviction was filed by respondent No. 3 against the appellant on 2nd March, 1982 on the ground of change of user, material, alteration and personal occupation. On 25th September, 1985, respondent No. 3 had filed an application u/s 32(4) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as "the said Act"), for eviction of respondent No. 3 on account of non-deposit of rent during the pendency of the proceedings. Subsequent to this application, respondent No. 3 was directed to quantify the exact amount in default and, as such application dated 2nd May, 1986, was filed wherein respondent No. 3 quantified the amount in default from December, 1981, till the date of filing of the said application. This application was disposed of by the Additional Rent Controller vide Order dated 7th January, 1987, whereby the proceedings were stopped and the appellant was directed to put the landlord in possession of the suit premises. Against this order, the appellant had filed Eviction Appeal No. 10/87 before the Administrative Tribunal. The Administrative Tribunal vide judgment dated 17th January, 1990, dismissed the appeal. The appellant then moved the High Court in Writ Petition No. 154/90, which was disposed of by a learned Single Judge of this Court vide oral judgment dated 21st/23rd September, 1994, against which the appellant has

filed this Letters Patent Appeal.

2. The learned Single Judge in his detailed judgment came to the conclusion that the conduct of the appellant was not only cantankerous throughout the proceedings, but the appellant had not made any attempt to deposit the rents at the earliest available opportunity, and on the contrary, had taken up all sorts of pleas and defences solely with the aim of avoiding the payment or deposit of the rent. The learned Single Judge also held that the belated plea raised by the appellant of adjustment of the cost of expenses was totally mala fide as no such plea was taken by him in the written statement.

3. Learned Advocate Shri Thali, appearing on behalf of the appellant, has urged before us that the appellant had tried to make payment of rent to the respondent, but he had refused to accept the same, as a result of which the appellant had sent Money Order towards the rent in March, 1982, which was refused by respondent No. 3. Consequently, it is pointed out that the appellant was advised by the Advocate not to deposit the rent and, as such, the appellant was under the bona fide belief that the rent was not required to be deposited. Thirdly, the appellant had, in fact, deposited the rent on 4th June, 1986, that is to say prior to the passing of the order by the Additional Rent Controller. According to the learned Advocate for the appellant, the courts below have not taken into consideration all these factors and that the courts have erred in coming to the conclusion that no sufficient cause was shown by the appellant for stopping the proceedings. Relying upon the judgment of the Apex Court in *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, and the judgment of Madras High Court in *Dirgai Ammal v. R.T. Mani* 1989 (2) R.C.J. 357, it has been urged by learned Advocate for the appellant that the circumstances of the case under consideration do not establish that there was any wilful default on the part of the appellant. Reliance was also placed on a judgment of this Court in *Suka Ishram Chaudhari Vs. Jamnabai Ranchodas Gujarathi and Others*, which has in fact, been disposed of on merits of the matter.

4. Learned Advocate Shri Sonak, appearing on behalf of the respondent No. 3, has urged that not only the appellant did not deposit the rent due during the pendency of the proceedings, but, on the contrary, had taken the specious pleas only with a view to avoid the deposit of the rent due. He took us through the stand taken by the appellant in the written statement as well as in the reply filed by him in respect of the application u/s 32(4) of the said Act. Relying upon the judgment of the Apex Court in *Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah*, it was urged that the payment of rent due prior to the passing of the order by the Additional Rent Controller, does not enure in favour of the appellant.

5. We have gone through the record in the light of the contentions advanced before us. The eviction petition was filed on 2nd March, 1982 and the contention of the learned Advocate for the petitioner regarding sending of Money Order prior to the institution of the eviction petition does not, in any manner, help the cause

of the appellant. The landlord's right to receive rent during the pendency of the proceedings is recognized by section 32 of the said Act. Section 32 of the said Act reads as under :-

"32. Payment or deposit of rent during the 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 proceedings 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 or 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 deems 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."

6. It is clear from sub-section (1) of section 32 that no tenant against whom proceedings for eviction have been instituted by a landlord shall be entitled to contest the proceedings before the Controller or any appellate or revisional authority, or to prefer any appeal or revision under the 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 upto the date of payment or deposit and continues to pay or deposit rent which may be subsequently due in respect of the building until the termination of proceedings before the Controller or appellate or revisional authority. According to sub-section (2) of section 32 of the said Act the deposit of rent under sub-section (1) has to be made within such time and in such manner as may be prescribed. The rules framed under the said Act provide for the manner and time of deposit. Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969, (hereinafter referred to as "the Rules"), provides

that a tenant against whom proceedings for eviction has been instituted by a landlord under the Act, shall deposit all arrears of rent due in respect of the building within one month from the date on which notice is served on him for the first time about the said proceedings before the Controller or the appeal or the revisional proceedings before the appellate or revisional authority, as the case may be. Sub-section (sic Rule) (2) of Rule 7 of the Rules provides that the tenant referred to in sub-rule (1) shall deposit the rent which may subsequently become due in respect of the building within fifteen days from the date on which such rent became payable. Sub-section (4) of section 32 provides that 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. In case the tenant disputes the amount due or to be deposited, the authority concerned, on the application made by the tenant or the landlord, after conducting such enquiry as necessary, shall determine the rent to be deposited.

7. It is in the light of these provisions that the matter in question is required to be examined. Admittedly, the appellant did not deposit any rent not only till the first application was filed on 25th September, 1985, but even after the second application was filed on 2nd May, 1986, and it is only just prior to the passing of the order by the Additional Rent Controller that the appellant chose to deposit the rent due. The grounds which were put forward by the appellant for not depositing the rent or the cause shown by him as to why the proceedings should not be stopped, as we have already said, are firstly that the landlord had refused to accept the rent sent by Money Order, but as we have already pointed out that this was in respect of the months prior to the filing of the proceedings. The second ground taken by him is that he was advised by his Advocate not to deposit the rent during the pendency of the proceedings. Except for the bare submission of the appellant that he was so advised by his Advocate not to deposit the rent during the pendency of the proceedings, there is no other material on record to substantiate his contention that he was so advised. The stand taken appears to be a mere ploy to avoid eviction. An advice given by an Advocate which is contrary to well-established provisions of law, can, by no stretch of imagination, be said to be bona fide advice. The law clearly contemplates that even during the pendency of the proceedings, the tenant shall deposit the rent as already referred to above, with reference to the provisions of the said Act. The appellant had also put up a plea that he had constructed an additional room and the expenses incurred on the said room were required to be adjusted against the rent payable. First of all, this plea is not at all substantiated by the written statement filed by the appellant. In para 6 of the written statement the appellant had categorically stated that he had taken the suit premises on lease somewhere in the year 1962 and after a lapse of about 5 years he had constructed an additional room at the cost of Rs. 3,000/-. It was categorically stated in para 6 that the amount spent as above was adjusted

towards the monthly account of rental payable by the respondent on account of use and occupation of the premises. In para 7 of the written statement, it was further stated that the rent had been further increased to Rs. 90/- per month, the rate at which the rental is being recovered. Thus, there was absolutely no plea in the written statement that the rent was required to be adjusted on account of construction of the said room, but on the contrary, it is clear from the written statement that the appellant had made categorical averment that the amount spent on construction of the room was adjusted towards the monthly amount of rental. It is only subsequently as a matter of afterthought, that the appellant tried to wriggle out of this position by contending that the cost incurred by him on construction was required to be adjusted against the payment of rent. In case the appellant disputed the rent due, the appellant could have very well filed an application u/s 32(3) of the said Act, but no such application was filed. The courts below have come to the conclusion that the appellant had failed to show any cause as to why the proceedings should not be stopped and the learned Single Judge has come to the conclusion that the appellant has acted in a most cantankerous manner throughout the proceedings and raised all sorts of pleas and defences solely with a view to avoid the deposit of rent.

8. In a Division Bench judgment of this Court, in *Shri Datta Anant Ghadi Vs. Guilhermina Silveria and others*, , to which both of us are parties, it has been pointed out that some of the factors which are relevant for exercising power u/s 32(4) of the said Act, are whether the default is for a short period or long period, whether the default is wilful or intentional whether the default is consistent or persistent, whether the payment was made at the earliest opportunity or after cantankerous contest and whether it was bona fide or to harass the landlord. In the case under consideration, we find that the default is for a period of more than four years. The default is consistent and persistent even inspite of clear provisions of law that the tenant is required to pay the rent during the pendency of the proceedings. The appellant did deposit the rent but after cantankerous contest and just prior to the passing of the order by the Additional, Rent Controller and that the failure to deposit the rent can, by no stretch of imagination, be said to be bona fide. In these circumstances, we find that the authorities below have exercised discretion in accordance with law and there is absolutely no reason for us to interfere with the discretion exercised by the authorities.

9. For the aforesaid reasons we do not find any merit in this appeal and the appeal is hereby dismissed. Interim order granting stay is hereby vacated. The appellant shall hand over possession of the suit premises to the respondent No. 3, within a period of six weeks from today. Costs shall be borne by the appellant.

C.C. expedited.

10. Appeal dismissed.