

(2018) 08 BOM CK 0171
In the Bombay High Court
Case No : Writ Petition No. 317 Of 2011

Smt. Rosy Manwindra and Anr	Vs	APPELLANT
Shri Audhut Govind Tilve		RESPONDENT

Date of Decision : 21-08-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1965 — Section 22, 32, 32(4)
Tamil Nadu Building (Lease and Rent Control) Act 1960 — Section 8(5)

Citation : (2018) 08 BOM CK 0171

Hon'ble Judges : C. V. Bhadang, J

Bench : Single Bench

Advocate : A. D. Bhobe, S. Bhobe, C. A. Coutinho

Final Decision : Dismissed

Judgement

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1. The challenge in this petition is to the order dated 18/1/2011 passed by the Administrative Tribunal in Eviction Appeal no.12/2003. By the impugned,,, order, the learnedÂ Administrative Tribunal has allowed an application filed by the respondent under section 32 (4) of the Goa, Daman and Diu",,,, Buildings (Lease, Rent and Eviction) Control Act, 1965 (Act, for short) directing stoppage of the proceedings and eviction of the petitioners from the",,,, suit premises shop no.4 on the ground floor of a building situated at Margao.,,,,

2. TheÂ respondent/landlord filed Eviction proceedings againstÂ now deceased Rosy Manwindra and her son Winsor alias Willy Manwindra (since,,, deceased) for their eviction on the ground ofÂ arrears of rent, subletting and the tenant ceasing to occupy the suit premises. That application was",,,,

filed somewhere in the year 1985 . The case made out in the application was that the original tenant was in possession of the suit shop on an agreed,,,

rent of Rs.275/- per month. It appears that during the pendency of the said application, the respondent filed an application under section 32(4) of the",,,,

Act on the ground that the tenants had failed to pay the arrears of rent and were thus liable to be summarily evicted. The Rent Controller vide order,,,

dated 24/2/1987 allowed the application. Feeling aggrieved the original tenant filed an Eviction Appeal bearing no.28/1987 before theÂ Administrative,,,

Tribunal.,,,,

That appeal came to be allowed on 13/4/1992 and the matter was remitted back to the Rent Controller for disposal in accordance with law. The main,,,

application for eviction was dismissed by the Rent Controller on 26/11/2002 holding that none of the three grounds on which the eviction was sought,,,

were established. Feeling aggrieved by the said order, the respondent filed Eviction Appeal no.12/2003 before the Administrative Tribunal. It appears",,,,

that on account ofÂ death of the original tenant, the present petitioners were brought on record (as respondents in the appeal before theÂ",,,,

Administrative Tribunal) in the year 2008. The respondents filed an application on 31/3/2009 before theÂ Administrative Tribunal for deposit of the,,,

arrears of rent from October 2018 to April 2009 which application was allowed on 21/4/2009. The petitioners, however, deposited the rents due only",,,,

on 3/9/2009 and failed to deposit the rent for the subsequent period i.e. from May 2009 onwards. It was in these circumstances that the respondents,,,

hereinÂ filed an application under section 32(4) of the Act on 30/3/2010 again seeking stoppage of the proceedings and eviction of the petitioners on,,,

the ground that they had failed to pay the arrears of rent.,,,,

3. The petitioners filed their reply and resisted the application. However, the quantum of rent and the arrears were not disputed. The only contention",,,,

raised was that the petitioner no.1 was continuously required to look after her daughter i.e the petitioner no.2 and her infant son and was required to,,,

incur heavy medical expenditure on the treatment of the petitioner no.2. The petitioners undertook to diligently pay and deposit the rent to the landlord,,,

or to deposit the same in the Court as directed by the Court. The petitioners also showed willingness to pay/deposit the arrears of rent for the period,,,

from May 2009 to April 2010 amounting to Rs.3300/-. The Administrative

Tribunal by the impugned order has allowed the application filed by the,,, respondents, which is subject matter of challenge in this petition." ,,,

4. I have heard Shri Bhobe, the learned counsel for the petitioners and Shri Coutinho, the learned counsel for the respondent. With the assistance of" ,,, the learned counsel for the petitioner. I have gone through the record and the impugned order passed by theÂ Administrative Tribunal.,,,

5. Shri Bhobe, the learned counsel for the petitioners has placed reliance on the decision of this Court in the case of Datta Anant Ghadi Vs. Smt." ,,,

Guilermana Silveira and others 2000(1) Goa L. T.39, in order to submit that although section 32(4) of the Act is couched in a language which may" ,,,

appear to be mandatory, the Division Bench of this Court in the case of Datta Anant Ghaddi (supra) has held that there is discretion vesting in the" ,,,

Rent Controller/appellate or revisional authority to direct stoppage of the proceedings and the consequent eviction of the tenant. It is submitted that it is,,,

not thatÂ in the case of every default (which may be unintentional or where the tenant is precluded from circumstances beyond his control in,,,

depositing the rent) that the tribunal can direct summary eviction of the tenant under section 32(4) of the Act. The learned counsel has specifically,,,

relied upon the observations of this Court in the case ofÂ Roque Antonio Judas Tadeu Caetano Ribeiro Vs. Angelo Caswiano Neves e Souza and 4,,,

others 1989 (2) Goa L.T. 313., which have been relied upon by the Division bench in the case of Datta Ghadi (supra). It is submitted that the relevant" ,,,

consideration for exercising the power is to see whether the default is for a short period or a long period, whether it is willful or unintentional, whether" ,,,

the default is stray or persistent and whether the payment was made at the earliest opportunity or after cantankerous contest. It is submitted that,,,

theÂ Administrative Tribunal has not considered this aspect while directing stoppage of the proceedings and eviction of the petitioners. It is pointed,,,

out that section 32 of the Act, is intended to secure payment, on pain of the tenant being precluded from contesting the proceedings and being required" ,,,

to put the landlordÂ in possession and it is not intended to serve as an order of eviction under section 22 of the Act.,,,

6. In so far as the failure of the petitioners to produce medical evidence about the illness of the petitioner no.2, it is contended that the Tribunal has not" ,,,

come to the conclusion that the cause shown by the petitioners about the illness

of the petitioner no.2 is false. It is thus submitted that the exercise of,,, discretion by the Tribunal in directing eviction of the petitioners is tainted with perversity which requires interference. The learned counsel was at,,, pains to point out that since after passing of the impugned order and during the pendency of the present petition, the petitioners have been punctually",,,, depositing the rent before this Court.,,,,

7. On the contrary, it is submitted by Shri Coutinho, the learned counsel for the respondent that the conduct of the petitioners and their failure to",,,,

deposit the arrears of rent is willful and the Tribunal is right inÂ exercising the discretion in favour of the respondent,Â directing the eviction of the",,,,

petitioners. Shri Coutinho, the learned counsel for the respondent has placed reliance on the decision of the Supreme Court in the case ofÂ E.",,,,

Palanisamy Vs. Palanisamy (D) by Lrs. And others, AIR 2003 SC 153, in order to submit thatÂ the subsequent deposit of the rent is of no avail and",,,,

the petitioners cannot claim any benefit out ofÂ such deposit. Specific reliance is placed on para 5 of the judgment in the case of E. Palanisamy,,,

(supra). Reliance is then placed on yet another decision of the Supreme Court in the case of Aero Traders Pvt. Ltd. Vs. Ravinder Kumar Suri AIR,,,

2005, SC 15., in order to submit that in respect of similar provisions contained in the Delhi Rent Control Act, providing for striking off the defence of",,,,

the tenant, the Supreme Court had upheld the order of the High Court, restoring the order of the Rent Controller, striking off the defence of the tenant.",,,,

Lastly reliance is placed on the decision of this Court in the case ofÂ Smt. Sumati K. Shirodkar Vs. Miss Terezinha Serrao and others",,,,

MANU/MH/0705/1994, in order to submit that the default inÂ payment under section 32(4) renders the tenant liable for eviction, even during the",,,,

pendency of the proceedings and the Court can exercise its discretion in condoning the delay in default of payment of rent only when the delay is,,,

properly explained. It is submitted that this Court in the case of Sumati Shirodkar (supra) has upheld the order ofÂ eviction passed under section 32,,,

(4) of the Act.,,,,

8. I have carefully considered the rival circumstances and the submissions made. In the present case, the quantum of rent as also the factum of",,,,

arrears is not in dispute. The only groundÂ for justifying the non payment was that the petitioner no.2 was ailing and the petitioner no.1 was required,,,

to look after the petitioner no.2 and her infant son and was required to incur expenditure on her medical treatment. Except this, there was no other",,,
ground made out for showing sufficient cause either for non payment of rent orÂ a cause against stoppage of proceedingsÂ and eviction. A perusal,,,
of the impugned order shows that the petitioner had sought time to produce documents in support of the illness of the petitioner no.2 . However, no",,,
such documents were ever produced. This is one of the reasons stated by the Administrative Tribunal apart from others, while directing eviction. It is",,,
not possible to accept that the tribunal having not come to the conclusion that the case about illness of the petitioner no.2 was false, ought not to have",,,
directed eviction of the petitioner. The question is not whether the case made out was false, or otherwise. The question is whether the cause shown",,,
was substantiated.,,,

9. Now coming to the merits of the application, the petitioners have produced a chart showing deposit of arrears made in para 12 of the petition which",,,
is as under:,,,

03/09/2009,427/R-09-10,"Rs.22,000/-",October 2002 to April 2009

30/04/2010,76/R-10-11,"Rs.3,3,00/-",May 2009 to April 2010

10/08/2010,345/R-10-11,"Rs.1,100/-",May 2010 to August 2010

30/08/2010,375/Rent/10-11,Rs.550/-,"September 2010 to
October 2010

18/10/2010,508/R-10-11,Rs.275/-,November 2010

24/11/2010,583/R/10/11,Rs.275/-,December 2010

20/12/2010,645/R/10/11,Rs.275/-,December 2010

18/01/2011,727/R/10-11,Rs.275/-,January 2011

23/02/2011,787/R/10-11,Rs.275/-,February 2011

and Rent Control) Act 1960 the principles as aforesaid would apply with equal force.,,,

14. It is now well settled that in the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, this Court would be slow in",,,

interfering with the discretionary orders of the present nature,Â unless and until the exercise of discretion is tainted with perversity. In view of the",,,

above the petition is without any merit and is accordingly dismissed.Â Rule is

discharged. The petitioners are granted six months time to vacate the,,,
suit premises. The amounts deposited before this CourtÂ and the Rent Controller
along with interest, if any shall be paid to the respondents.",,,