

(1984) 10 BOM CK 0025

In the Bombay High Court

Case No : Letters Patent Appeal No. 58 of 1983

Vinod Kumar Gosalia and Others

APPELLANT

Vs

Frank Silva Lobo Norton and Others

RESPONDENT

Date of Decision : 11-10-1984

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1976 — Section 22

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 22(3), 32

Citation : (1987) 2 BOMLR 613

Hon'ble Judges : G.D. Kamat, J; B.C. Gadgil, J

Bench : Division Bench

Advocate : M.S. Usgoancar, for the Appellant; J. Dias, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Kamat, J.—This Letters Patent Appeal is filed by the tenants directed against the Order of the Single Judge dated 22nd November, 1983 confirming the Orders of the Rent Controller and the Administrative Tribunal by virtue of which the tenants are to vacate the premises and hand over the same to the respondents Nos. 1 and 2.

2. The sole contention raised in this appeal is that the tenants having complied with the requirement of section 32 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 no order could be made by the Controller stopping the proceedings and directing them to hand over the premises. In other words, the question raised is that in an eviction proceeding against the tenant to enable him to contest the same the deposit of the arrears of rent ought to be confined to the rents that are legally recoverable or he is required to deposit the entire arrears of rent due.

3. In this appeal facts are few and we can conveniently refer to them as there is no dispute about them. The respondents Nos. 1 and 2 filed an application for

eviction of the appellants u/s 22(2)(a) and (d) of the Goa, Daman and Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called the Goa Act.) This application is dated 22nd June, 1976 and filed thereabout. The respondents averred that the appellants have fallen in arrears of rent from July, 1971 to May, 1976, rent being at the rate of Rs. 104/- per month. The appellants with a view to contest the said proceedings deposited arrears of rent for the period from June, 1973 to May, 1976 i.e. three years rent before the application filed against them for their eviction. Thus, the appellants did not make a deposit of the arrears of rent covering the period from July, 1971 to May, 1973.

4. To facilitate appreciation of the arguments it is convenient to advert to relevant sections. Section 22 reads :

"22. 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---

(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."

Sub-section (3) of section 22 reads thus:---

"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 subsection, 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."

It is common ground that section 22(2)(a) has been inserted by virtue of the Goa, Daman and Diu Act No. 11 of 1976 by way of an amendment. By the same amending Act, sub-section (3) of section 22 has also been introduced.

5. Prior to the amendment which came into force on 27th May, 1976 section 22(2)(a) read thus:---

"(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; or"

Let it be seen that the amendment brought about in section 22 in 1976 is a drastic change. Whereas previously an application could have been filed against a tenant for his eviction on the grounds that he is in arrears of payment of rent for

a total period of three months, under the present section a landlord cannot bring an action for eviction against a tenant unless he gives a notice of thirty days and if within the said period of thirty days the tenant fails to pay or tender such arrears of rent as are legally recoverable then only the landlord is able to file eviction proceedings.

6. The scheme of this provision makes it clear that once the notice is served by the landlord on the tenant, the latter can tender the arrears of rent that are legally recoverable within thirty days from the receipt of the notice and then there is no question of any proceedings being filed against him. Sub-section (3) of section 22 speaks that if eviction proceedings are filed against a tenant once he fails to tender to the landlord the legally recoverable rents within thirty days from the receipt of the notice, with a view to get himself relieved from the eviction, the tenant is permitted to pay or tender or deposit with the Controller the arrears of rent due by him upto the date of such payment together with the costs of the application. From this sub-section (3) it is clear that the tenant on payment of arrears of rent due within thirty days from the date of summons can stop his eviction. It will be advantageous to note that whereas in section 22(2) (a) the tenant can avoid proceedings being filed on payment of arrears of rent which are legally recoverable insofar as sub-section (3) is concerned, in order to get relief from eviction he has to tender or pay or deposit the arrears of rent due by him as also the costs.

7. Section 32 of the Goa Act states thus:---

"32. Payment or deposit of rent during 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 appellants 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 of 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."

From the above section it is clear that once proceedings for eviction are filed against a tenant on any ground or grounds and if such tenant wants to contest the proceedings he has to either pay or deposit with the Controller or the appellate or revisional authority as the case may be all arrears of rent due upto the date of payment of the deposit and further continue to pay or deposit any rent which may subsequently become due until the termination of the proceedings as the case may be.

8. Shri M.S. Usgaoncar, learned Counsel for the appellants/tenants contended before us that when the eviction of a tenant is sought on the grounds of non-payment of rent the landlord is required to give a notice of thirty days and if within that period the tenant is liable only to pay the rent which are legally recoverable then in compliance of section 32 to contest the proceedings he cannot be made to pay or deposit the arrears more than what is legally recoverable. The application for eviction having been filed in June, 1976, in compliance with section 32 of the Act tenants have already deposited arrears of rent from June, 1973 to May, 1976 and considering section 22(2)(a) there was no question of the appellants paying arrears of rent for more than three years next before the date of filing of the application.

9. The learned Single Judge in disposing of the said writ petition held that section 32 is independent of section 22 and as the appellants failed to pay or deposit all the arrears of rent due from July, 1971 to May, 1976 the orders made by the Controller and Tribunal were in accordance with law.

10. Shri Usgaoncar alleges that the foundation for an action for eviction against a tenant u/s 22(2)(a) being non-payment of rent and in such event the landlord is required to give a notice of thirty days and if within that period the tenant pays the arrears of rent which are legally recoverable the landlord is clearly precluded from filing any eviction proceeding. If this be the case it is his submission when a proceeding is filed in order to enable the tenant to contest the same all that the tenant has to pay or deposit are the arrears of rent limited only to legally recoverable dues and not in excess thereof. In other words he says that there is no question of deposit of rents which are barred by law of limitation. Further according to him the very cause of action is the non-payment of rent and this being so if the recovery is limited to the rents legally recoverable then to contest such proceeding started by the landlord, not more than what is legally recoverable arrears are required to be paid or deposited if the tenant wants to contest such proceeding. Once section 22(2)(a) has been amended this amendment is to be looked in the perspective properly so called. Shri Usgaoncar submits that while construing section 32 the expression "legally recoverable" as

appearing in section 22(2)(a) will have to be read in section 32 of the Act and if these words are not read in section 32 he contends the result will be absurd.

11. In support of this appeal he places reliance in the decision of Smt. Mankunwar Bai v. Sunderlal Jain, reported in All India Rent Control Journal, Vol. 1 1978 at page 518. This is a Full Bench decision which lays down that a tenant is not obliged to deposit time barred rent u/s 13(1) of the M.P. Accommodation Control Act, 1961. Shri Usgaoncar brought to our attention that in the M.P. Accommodation Control Act, 1961 various grounds of eviction have been mentioned u/s 12. However, ground (a) is of significance which according to him is more or less akin to ground 22(2)(a) of the Goa Act. One can advantageously refer to ground (a) of section 12 the M.P. Act which reads as under :---

"12. Restriction on eviction of tenants.---

(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;"

He next brought our attention to section 13 of the same Act to show that section 32 of the Goa Act in its scheme is similar to section 13(1) of the M.P. Act. It reads as under :---

"13 When tenant can get benefit of protection against eviction. (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, deposit in the Court or pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate."

Shri Usgaoncar is right when he says that ground 12(a) is similar to ground 22(2)(a) of the Goa Act and the scheme of section 13(1) of the M.P. Act is *pari materia* with section 32 of the Goa Act. Under the M.P. Act a landlord is required to give a notice of two months making the demands for arrears of rent which are legally recoverable just as section 22 of the Goa Act which requires a landlord to serve a notice of thirty days seeking arrears of rent only to the extent of arrears legally recoverable. Within one month from the service of the writ of summons or within such further time as the Court may permit on an application the tenant to obtain

benefit of protection against eviction has to however pay or deposit an amount calculated at the rate of rent on which it was paid for the period from which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which the deposit was made month by month by the 15th of each succeeding month. The Full Bench while construing sections 12(a) and 13(1) of the M.P. Act held that a tenant to obtain the benefit of relief from eviction in a proceeding filed against him by a landlord on any of the grounds set out in section 12 of the Act, all that he is required to pay to the landlord or deposit in the Court are the arrears which are legally recoverable. In other words a sum of money for period of three years next before the date of filing of the application for eviction need be paid or deposited. Shri Usgaoncar canvassed that in view of the ratio of the said decision to interpret section 32 of the Goa Act while construing the words "all arrears of rent due" in section 32 he wants us to read "all arrears of rent due which are legally recoverable" because section 22(2)(a) speaks of arrears of rent due as are legally recoverable.

12. It must be seen that this judgment under the M.P. Act is no authority for interpretation of section 32 of the Goa Act. In section 32 of the Goa Act it has been clearly mentioned that a tenant if he wants to contest the proceedings filed against him on whatever ground that may be, he has to either pay to the landlord or deposit before the Controller all arrears of rent due. The words and language used in this section are entirely different from what has been used in section 13 of the M.P. Act. Section 13 of the M.P. Act instead of the expression "all arrears of rent due" speaks of deposit of rent for the period for which the tenant may have made default including the period subsequent thereto. It is in the context of this language and more particularly the word "default" that the M.P. High Court held that a tenant was required to pay or deposit, to get the relief from eviction, rents which are only legally recoverable. The word "default" used in section 13 was held to be necessarily referring to the default in Clause (a) of sub-section (1) of section 12 of the M.P. Act and it is in that context that it was so held. Now the Goa Act u/s 32 requires all arrears of rent due to be paid or deposited. Therefore, the decision cited is clearly not applicable.

13. Shri Usgaoncar next advantageously referred to a decision of Satyendra Kumar v. M.P. Ramchandra Murthey, A I R 1975 Con 371. This case arose before the High Court in similar circumstances as in the present case. The question arose in that case before the Karnataka High Court with regard to the construction of the expression "arrears of rent due" occurring in sub-section (1) of section 29 of the Karnataka Rent Control Act, 1961. It was held in that case while construing sections 21 and 29(1) that to obtain a relief of forfeiture of tenancy the tenant has to pay or deposit only arrears of rent which are legally recoverable. Shri Usgaoncar pointed out that section 21 which gave the grounds of eviction of the tenant in the Karnataka Act is similar to section 22(2)(a) of the Goa Act and the scheme of section 29 is pari materia with section 32 of the Goa Act while construing the expression "legally recoverable" as mentioned in the ground of eviction u/s 21 of the Karnataka Act in interpreting section 29(1) the

Karnataka High Court in that case held that no new right could be created in the landlord. That all that need be paid is the rent legally due and recoverable and cannot include rent barred by the law of limitation. There is considerable force in the argument of Mr. Usgaoncar that the sections referred to in the Karnataka Act in its language and scheme are similar to the relevant sections of the Goa Act. But we are unable to agree and accept the contention of Shri Usgaoncar for the simple reason that the expression "legally recoverable" and giving of the notice of one month was for the first time inserted in the Goa Act by the amendment in the year 1976. Section 21 and section 29 of the Karnataka Rent Control Act, 1961 were in existence in the statute book at one and same time. In so far as the Goa Act is concerned section 32 as unlike section 22(2)(a) has not undergone any change.

14. Shri J. Dias, the learned Counsel for respondents Nos. 1 and 2 is quite right when he submits that the Legislature thought of removing certain hardships as contained in the earlier pre-amended Clause (2)(a) of section 22 and therefore brought the amendment in the year 1976 to give an added advantage to the tenant that he be given a notice of thirty days and the landlord is entitled to obtain from the tenant only rents due which are legally recoverable. He next submits that section 32 is independent of section 22 and what is more the Legislature was aware of the existence of section 32 on the statute book when such amendment was brought into force and for that matter by which time the courts in this territory had already interpreted said section 32. It is, therefore, contended that the words "legally recoverable" cannot be projected in section 32 of the Act and it is further contended by Shri Dias that if the tenant pays the rent as demanded of him by the landlord equivalent to a sum which is legally recoverable he cannot get the same benefit when proceedings are performed to be filed against him and if such situation is created by the tenant with a view to get himself relieved from the penalty of eviction he has to pay all arrears of rent due including that may be otherwise barred by the statute of limitation in order to contest the proceedings for eviction. He next brought to our attention sub-section (3) of section 22. By this section another opportunity is afforded to the tenant that once he does not comply with the notice of the landlord and pay to him the arrears of rent that are legally recoverable within thirty days from the date of service of notice on him by the Controller in a proceeding filed against him the tenant can pay arrears of rent due and at the same time agree to pay the cost of the proceedings if he wants to get himself relieved from eviction. The fact that the Legislature has made out distinction in sections 22(2)(a) and sub-section (3) of section 22 is wilful according to Shri Dias and in this view of the matter it is not possible to read the words "legally recoverable" in section 32 like section 22(3).

15. The Supreme Court had occasion to decide a similar question in *Khadi Gram Udyog Trust Vs. Ram Chandrajji Virajman Mandir, Sarasiya Ghat, Kanpur*, The decision arose under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. u/s 20-(4) of the Act a tenant who keeps rents in arrears

against whom proceedings for eviction are undertaken is entitled to remain in the property provided he deposits the "entire amount of rent due". The question arose whether the expression "entire amount of rent due" would include time barred arrears. The Supreme Court answered this in the affirmative. Shri Usgaoncar still tried to distinguish and say that section 20(4) of the said U.P. Urban Buildings Act is like sub-section (3) of section 22 of the Goa Act and therefore no reliance could be placed in that decision because section 32 is entirely different. We are unable to accept this argument or line of thinking of the learned Counsel for the appellants. An expression once construed cannot be construed in a different manner in different situations. Once it is held that the entire amount of rent due would also include time barred dues, it would be so in all situations and it cannot be said that it would be good in situations like section 22(3) and different in section 32. On the contrary we would advantageously make use of this decision of the Supreme Court in *Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur*, to construe simple expression used in section 32 of the Goa Act which says that if a tenant desires to contest the proceeding he has to pay to the landlord or deposit with the Controller all arrears of rent due upto the date of payment or deposit and continues to pay or deposit. It is therefore safe to adopt the simple rule of construction to give effect to the words used in a particular section keeping in mind its language. The language used in section 32 is plain enough to say all arrears of rent due in respect of the building. These words are plain and unambiguous and it is not possible to telescope the words "legally recoverable" in this section from section 22 and therefore the intention of the Legislature appears to be clear that it was intended that a tenant should deposit all arrears of rent due when the tenant fails to pay within thirty days of the notice by the landlord the legally recoverable arrears of rent and this is explicit to us because the Legislature brought about the amendment in 1976 of section 22 leaving section 32 as it had always been.

16. In this view of the matter the appeal fails. The appeal is dismissed with costs.