
(1986) 07 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 202 of 1985

Xoc Malik Bepari

APPELLANT

Vs

Josefato Francisco Pinto and Others

RESPONDENT

Date of Decision : 18-07-1986

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 — Section 17(2), 22(2), 32(3)

Citation : (1986) 3 BomCR 527

Hon'ble Judges : G.F. Couto, J

Bench : Single Bench

Advocate : M.P. Shinkre, for the Appellant; C.F. Alvares, for the Respondent

Final Decision : Dismissed

Judgement

G.F. Couto, J.—The petitioner challenges in this writ petition the judgment dated 26th July, 1985, passed by the second and third respondent as Members of the Administrative Tribunal, Goa, Daman & Diu, ordering his eviction from the premises occupied by him in a building belonging to the first respondent.

2. The petitioner is occupying the said premises on the basis of a lease agreement entered into by him with the first respondent. The demise premises were given on lease for residential purposes, but it seems that right from beginning, the said premises had been used for a different purpose, namely, as a cattle shed. It appears that the first respondent decided to demolish the said building and erect therein a new construction and, therefore, served, a notice on the petitioner to vacate the demise premises. A dispute arose between the petitioner and the first respondent, and therefore, eviction proceedings were instituted against the petitioner on several grounds, and inter alia, on the ground on nonpayment of rent for three months. The Rent Controller, South Sub-Division, Margao, by his order dated 20th December, 1975, dismissed the said proceedings for eviction and insofar as the non-payment of rents is concerned, held the view that the said non-payment of rents was due to the fact that the

first respondent has refused to issue receipts for Rs. 50/- per month and was intending to issue receipts only for the only for the amount of Rs. 14/-. Therefore, the learned Rent Controller held the view that the non-payment of rent was due to a good and sufficient cause. Dissatisfied, the first respondent preferred an appeal to the Administrative Tribunal against the said judgment of the Rent Controller. The Tribunal concurred with the view taken by the Rent Controller in most of the grounds. But insofar as the ground of non-payment of the rent, the Tribunal, while accepting that the nonpayment of rent was due to an act committed by the first respondent, held that nonetheless, the said act of the first respondent was not sufficient to absolve the petitioners from remitting the rent by money order obeying the mandate of section 17(3) of the Goa, Daman and Diu Buildings (Lease Rent and Eviction) Control Act, 1968 (hereinafter referred to as "the Act"). Therefore, the learned Tribunal allowed the appeal and ordered the eviction of the petitioner u/s 22(2)(a) of the Act.

3. The petitioner challenges the said judgment and the view taken by the Tribunal on several grounds. Shri M.P. Shinkre, the learned Counsel appearing for him, has, however, restricted his attack to two grounds and, therefore, I will continue myself to deal only with the grounds advanced by him. In fact, the learned Counsel first contended that respondents 2 and 3 allowed themselves to be induced in error by failing to appreciate that the Act is a beneficial piece of legislation mainly enacted to give protection to the tenants. The said respondents had failed to appreciate that under the scheme of the Act, the question of depositing the rents pending the aforesaid proceedings arises only for the purpose of section 32, and further, that the provision of proviso to sub-section (1) of section 22 of the Act as it was standing at the time of the institution of the proceedings was to be considered and the benefit thereof was to be given to the petitioner. He thus urged that only if there was no dispute in respect of the quantum of rent payable, the provision of section 17(3) of the Act would be attracted to the facts and circumstances of the case. The learned Counsel placed reliance, in this connection on the decisions of the Supreme Court in *Jeshwantrao Mulukchand Vs. Anandilal Bapalal*, and of the Gujarat High Court in *Rupaben & anr. v. Babubhai Deojibhai*, 1983(1) R.C.J. 577. Secondly, he contended that section 22 of the Act was amended while the appeal was pending before the Tribunal and, therefore, the petitioner was benefited by the amended provision. He placed reliance in support of this contention on the decision of the Supreme Court in *L.N. Guin and others v. Niranjan Modak*, 1985(1) R.C.J. 152. He further contended that when the appeal was pending before the Tribunal, there was a decision of a Division Bench of this Court in Letters Patent Appeals Nos. 6 to 11 and 15 of 1983 decided on 12th October, 1984. The Division Bench has taken the view in the said judgment that the amendment to section 22 was only prospective in nature and, therefore, the argument now advanced was not available to the petitioners. It was only after the passing of the judgment in *Guin's* case that the said argument could be advanced.

4. As regards the first contention of Mr. Shinkre, it will be profitable to advert to

section 22(2)(a) of the Act as it was standing at the relevant time of the institution of the eviction proceedings. It read as under :---

"(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;.....Provided that in any case falling under Clause (a), if the Controller is satisfied that the tenant's default to pay or tender rent was not without reasonable cause, he may, notwithstanding anything contained in section 32, give the tenant a reasonable time, not exceeding thirty days, to pay or tender the rent due by him to the landlord upto the date of such payment or tender and on such payment or tender the application shall be rejected."

It is common ground that the petitioner has been paying regularly the rent of the demise premises for a long period of time and that on one occasion, when he went to make the payment of rent, he demanded receipts of the rent for Rs. 50/- per month. The landlord refused to issue such receipt for he was intending to issue receipt for Rs.14/- per month as this was the rent in the lease agreement. It is also not disputed that the petitioner ceased to pay the rent from that date onwards on account of the said refusal of the first respondent to issue receipts for Rs. 50/-. Further it is also not disputed that at the time of the institution of the eviction proceedings, the petitioner had not paid rent for three or four months. Now, the Rent Controller held the view, in this background, that the default of the petitioner to pay or tender the rent was not without reasonable cause. In his opinion, the fact that the first respondent refused to issue receipts was a reasonable cause for the default. The Tribunal, however, while accepting as correct that the landlord has refused to issue receipts, was of the view that the default in paying the rent was not due to reasonable cause, since the refusal of the landlord to issue receipt was not absolving the tenant of his duty to tender the rent in the manner provided in section 17(3) of the Act. In fact, the said provision of law provides that if the landlord or his authorised agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), or does not accept any rent tendered by a tenant, the tenant shall remit the rent to the landlord by money order after deducting the money order commission and continue to remit any rent which may subsequently become due in respect of the building in the same manner until the landlord signifies by a written notice to the tenant his willingness to accept the rent and deliver a receipt as required by sub-section (2). Sub-section (3) has to be read together with sub-section (1) which provides that every tenant shall pay rent within the time fixed by contract or, in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. It becomes clear from sub-sections (1) and (3) read together that an obligation is imposed on the tenant to remit the rent by money order in case the landlord refuses or neglects to deliver to the tenant a receipt or to accept any rent tendered by the tenant. This much was, otherwise,

correctly held by the Tribunal. Now, if this is the mandate of section 17 of the Act, it becomes clear that the non-payment of the rent or the non-remittance thereof by the tenant on account of the refusal of the landlord either to accept the rent or to issue a receipt is not a sufficient and good cause, for the law itself has provided a remedy or a modus to force the landlord to accept the rent. Therefore, the non-remittance of the rent as provided in sub-section (3) of section 17 by the petitioner is sufficient to show that he was not prevented by a reasonable cause from discharging his obligation under the contract. Therefore, the view taken by the second and third respondents in the challenged judgment is entirely correct. It is true that Shri Shinkre contended that the petitioner could not remit the rent to the landlord as there was dispute about the quantum of the rent payable. In fact, according to him, the landlord was intending to issue a receipt for Rs. 14/- only while the petitioner was actually paying a rent of Rs. 50/- per month. This being the case, the petitioner was not in a position to know what was the actual rent to be paid and as such, was not bound to send the rent by money order. In this respect, the learned Counsel placed reliance on an unreported decision of a Single Judge of this Court in Writ Petition No. 195 of 1984, R.N. Lotlikar and Another Vs. Kashinath Ghanashyam Sinai Kakodkar and Others, In the said judgment, the Single Judge of this Court has observed that the mandate of sub-section (3) of section 32 of the Act is that when a dispute is raised as to the quantum of the rent, the Controller or the appellate or revisional authority, as the case may be, has to determine summarily the rent to be so paid or deposited and, therefore, in other words, unless and until the rent is summarily determined, the tenant will not be in a position to pay or deposit the rent. I am, however, unable to agree with the learned Counsel that any dispute existed in respect of the amount of the rent payable. In fact, the case raised by the petitioner was not that the landlord was claiming that the rent was only of Rs. 14/- per month. On the contrary, he only was not willing to issue receipt of the actual rent paid for Rs. 50/-, but to issue receipt for the amount of rent agreed, to pay in the agreement of lease. Apart from that, the petitioner, if at all was not knowing what was the amount of rent payable, ought to have approached the authorities under the Act to get the rent duly determined, or after the institution of the eviction proceedings, filed an application under sub-section (3) of section 32 of the Act to get the rent summarily determined. He did not adopt any of these courses of action which was entirely open to him and went on not paying the rent for about 13 months even after the institution of the said proceedings notwithstanding what is specifically laid down in sub-section (1) of the said section 32. In the circumstances, therefore, it is rather difficult to accept the submission of Shri Shinkre that there was any dispute as regards the quantum of the rent payable.

5. Coming now to the second contention of the learned Counsel, it will be pertinent to note that the question of the prospective or retrospective operation of the amendment to section 22(2)(a) of the Act fell directly for consideration of this Court in Eknath Kira Akhadkar and Others etc. Vs. Administrative Tribunal

and Others etc., This Court, after having discussed several authorities of the Supreme Court on the point, particularly the cases of Rafiquennessa Vs. Lal Bahadur Chetri (Dead) through his Representatives and Others, , Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha, ; Mohanlal Chunilal Kothari Vs. Tribhovan Haribhai Tamboli, ; Smt. Sefali Roy Chowdhary and Others Vs. A.K. Dutta, ; Ganesh Flour Mills Company Ltd. v. Ramesh Chand, 1979(2) R.C.J. 418 and A. Krishnaswami v. S. Rasheeda, 1981(1) R.C.J. 320, and after going through the relevant facts and the Statement of Objects and Reasons for the amendment, held the view that the said amendment to sub-section (2)(a) of section 22 of the Act was merely prospective in nature and not retrospective. The said decision of the Single Judge of this Court was appealed from the Division Bench has, in Letters Patent Appeals Nos. 6 to 11 and 15 of 1983, affirmed the view taken in Eknath's case by judgment dated 12th October, 1984. Now in Guin's case, the Supreme Court has observed that :--

"On the question whether the provision applied to pending suits for possession, the learned Judges drew attention to the point of time specifically mentioned in the sub-section. It operated, they said, "when the decree for recovery of possession will have to be passed" and did not refer back to the institution of the suit. By a unanimous judgement the learned Judges held that the sub-section applied to pending suits. In passing, it may be noted that the learned Judges expressed a degree of hesitation on whether a statutory injunction of that nature could be applied retrospectively to appeals against decree already made. But any doubt on the point must be considered to have been finally removed, by this Court when in Mst. Refiquennessa v. Lal Bahadur Chetri, another Bench of five Judges, which included J.C. Shah, J., who was a member of the Bench in the earlier case, held on an interpretation of Clause (a) of sub-section (1) of the Assam-Non Agricultural Urban Areas Tenancy Act, 1955, which prohibited the eviction of a tenant, that the statutory provision came into play for the protection of the tenant even at the appellate stage. The learned Judges relied on the principle that an appeal was a continuation of the suit and that the appeal would be governed by the newly enacted Clause (a) of sub-section (5) even though the trial Court decree had been passed earlier."

The Court further observed that a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties as has been laid down in Ram Sarup Vs. Munshi and Others, ; Mula and Others Vs. Godhu and Others, and quoted the observations made in Smt. Dayawati and Another Vs. Inderjit and Others, to the effect that "if the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance." From the above quoted observations made by the Supreme Court in Guin's case, it becomes clear that the Supreme Court far from disproving the view taken in Mst. Refiquennessa's

case, has affirmed the same and has laid down that the test to be taken recourse of is if the new law speaks in a language, which expressly or by clear intendment, takes in even pending matters, then, such law will have retrospective effect. Otherwise; the same law will be only prospective. It is true that while applying these principles to the case at hand which was a case under sub-section (1) of section 13 of the West Bengal Premises Tenancy Act, 1956, the Supreme Court held that the amendment of the said provision of law was retrospective in effect. But in our case, applying the very same test, this Court had arrived at the conclusion that the amendment to sub-section (2)(a) of section 22 of the Act was merely prospective in nature. This view was affirmed by the Division Bench and is, therefore, binding on me. I may point out that since the Supreme Court has not disproved the view taken earlier in Mst. Refiquennessa's case in the case of Guin, the latter case does not in any manner, affect the above decision of the Division Bench.

7. The result, therefore, is that this writ petition fails and is, consequently, dismissed with costs. The Rule is, accordingly, discharged.

8. The learned Counsel for the petitioner prays that the operation of the judgment just delivered be stayed for four weeks. Shri Alvares, the learned Counsel appearing for the first respondent, has no objection. The stay prayed for is, accordingly, granted.