

LETTERS PATENT APPEAL NO. 11 OF 2000

Rajendra N. Dharwadkar,
r/o Panaji, Goa.

...Appellant.

Versus

1. Kisanrai V. Gaonkar,
r/o Panaji, Goa,

2. Additional Rent Controller,
North Goa District at
Panaji, Goa, and

3. Administrative Tribunal,
with office at Panaji, Goa.

...Respondents.

Shri S. G. Dessai, Senior Advocate with Shri S. D.
Padiyar, advocate for the appellant.

Smt. A. A. Agni with Ms. Asha Dessai, advocate for
respondent no.1.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 30th June, 2003.

ORAL JUDGMENT (Per Rebello, J.)

The appellant is the landlord who had filed proceedings against respondent no.1 for eviction on the ground of personal and bona fide requirement. Respondent no.1 had by an application applied for depositing the rent, pending the proceedings. From the record it appears that respondent no.1 was not regular in payment of rent, whereupon the appellant herein by an application of 30th September, 1988, applied for stopping the proceedings and for eviction of respondent no.1 on the ground of failure to deposit. Reply was filed by respondent no.1 showing cause as to why the rent could not be deposited. By an Order of 5th April, 1990, cause shown was held to be not sufficient cause and accordingly, an order came

to be passed directing respondent no.1 to vacate the suit premises. An appeal came to be preferred against the said Order before the Administrative Tribunal. The Tribunal on consideration of the material, chose not to interfere with the order of the Addl. Rent Controller. The order of the Tribunal discloses that the affidavit filed in support of the reply to the application for stopping the proceedings was not verified according to law and, as such, was rejected by the Tribunal.

2. Against that order a petition came to be preferred before this Court and was numbered as Writ Petition No. 225/1991. That petition came to be disposed of by an Order of this Court dated 16th February, 2000. The learned Judge while considering the orders of the Addl. Rent Controller and the Administrative Tribunal found that they had not addressed themselves to the correct test which had to be applied, which was whether the respondent no.1 herein had shown sufficient cause for not stopping the proceedings and in that light of the matter remanded the matter to the Addl. Rent Controller, respondent no.2. It is against this Order that the appeal has been preferred.

3. On going through the record what is clear is that the learned Single Judge on consideration of the orders impugned found that the affidavit evidence could not have been ignored merely because the affidavit was not sworn and

authority before whom it was filed found it not to be defective. It is in these circumstances that the learned Single Judge held that the Administrative Tribunal, respondent no.3, ought not to have ignored the said evidence and more so considering that cause had been shown by respondent no.1. The learned Judge noted that on no account, respondent no.2 before whom the affidavit had been filed had not found any defect, nor had rejected the said affidavit on any such ground.

4. On behalf of the appellant, learned counsel contends that though the matter has been remanded yet for all purposes the appellant is foreclosed from pointing out to the Addl. Rent Controller and the Administrative Tribunal that this was a case where respondent no.1 had not been able to show sufficient cause for not stopping the proceedings.

On a perusal of the judgment we do not find any such finding recorded by the learned Single Judge. All that the learned Single Judge has stated is that the correct test which had to be applied had not been considered by the Addl. Rent Controller and the Administrative Tribunal. At any rate, the appellant can be protected by directing respondent no.3 to dispose of the application of the appellant independently uninfluenced by any observations made by this Court to that effect.

With the above, we do not find any merit in this

Letters Patent Appeal and, accordingly, the Letters Patent Appeal stands disposed of. No order as to costs.

Considering that the application is of the year 1984, the Addl. Rent Controller is directed to dispose of the application within six months from today.

F. I. REBELLO, J.

P. V. HARDAS, J.

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