
(2000) 1 ALLMR 610 : (2000) 2 BomCR 104 : (2000) 2 MhLj 101

Bombay High Court (Goa Bench)

Case No: Second Appeal No. 35 of 1999

Leanco Victor Frois and
another

APPELLANT

Vs

Shri Nicolao Piedade
D"Costa

RESPONDENT

Date of Decision: Aug. 20, 1999

Acts Referred:

Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 â€” Section 1(2)

Citation: (2000) 1 ALLMR 610 : (2000) 2 BomCR 104 : (2000) 2 MhLj 101

Hon'ble Judges: R.K. Batta, J

Bench: Single Bench

Advocate: Sudin Usgaonkar, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

R.K. Batta, J.

T

1. The appellants had filed a suit for eviction, restoration of possession, permanent injunction and mesne profits. The case of the appellants is that

they had leased suit house to the respondent on monthly rent of Rs. 2/- . The respondent failed to pay the rent and after notice was given to vacate,

suit in question was filed. The trial Court had decreed the suit partly and directed the respondent to vacate the suit house as well as pay rent for 3

years prior to institution of the suit. The respondent was further directed to pay Rs. 2/- per month from 1st May 1980, that is to say, from the date

of filing the suit till eviction. The respondent filed appeal before the District Court and the learned Additional District Judge framed the following

points for determination:-

1. Whether the village of Penha de Franca wherein the suit house is situated is within 2 kms. from Panaji?
2. Whether the distance from Penha de Franca to Panaji is not relevant in view of the fact that Penha de Franca is situated in the Taluka of

Bardez?

3. Whether the jurisdiction of the Civil Court is barred in entertaining the suit and the decree passed is a nullity?

The learned Additional District Judge came to the conclusion that village Penha de Franca was within 2 kms. around the limits of city of Panaji; the

location of city of Mapusa or the Taluka of Bardez has no relevancy in view of the fact that it is within the limit of 2 kms. around the limit of city of

Panaji and that the jurisdiction of the Civil Court is barred and the decree of eviction was a nullity. On these findings the Appellate Court reversed

the decree and the result was that the appellants' suit stood dismissed.

2. The appellants have come in second appeal on the following substantial questions of law framed in this Memo of Appeal:-

Whether the Appellate Court erred in interpreting and construing Notification dated 30-09-69 passed under the Goa Rent Control Act extending

the applicability of the said Act to cities, towns and villages of Goa and wrongly held that the village of Penha-de-Franca from Bardez Taluka is

covered by the belt of 2 kms. around the city of Panaji from Tiswadi or Ilhas or Goa Taluka, for the purpose of application of Rent Control Act.

3. Learned advocate for the appellants urged before me that initially the Rent Control Act was extended to the cities of Panaji, Margao, Mapusa,

Vasco, Daman and Diu with effect from 30th September 1969. Simultaneously, Notification was issued by the Administrator of Goa, Daman and

Diu in terms of section 1(2) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter called "the said Act")

whereby the provisions of the Act were also extended to areas specified in Column No. 3 of the Notification dated 30th September 1969. The

contention advanced by learned advocate for the appellants is that the said Notification has been issued Taluka wise and such belt of 2 kms.

around the limits of the city of Panaji cannot include Penha de Franca, which falls in Bardez Taluka. He also pointed out that subsequently the Act

in question has been extended to entire Goa with effect from 23rd December 1980. He, therefore, submits that the appeal be admitted on the

substantial question of law framed in the Appeal Memo.

4. Section 1(2) of the said Act reads as under:-

(2) It extends, in the first instance, to the cities of Panaji, Margao, Mapusa and Vasco (including the harbour area) and 10 Daman (Nani and

Moti) in the Union Territory of Goa, Daman and Diu but the Administrator may, from time to time, by notification in the Official Gazette extend this

Act or any provision thereof to any other area in the said Union Territory.

It empowers the Administrator to extend the Act or any provision thereof to any other area in the Union Territory (Goa at that time was a Union

Territory) by notification. There is nothing in section 1(2) of the said Act to indicate that the Notification by the Administrator can be issued or is

required to be issued only Taluka wise. It is no doubt true that the Notification in Column No. 2 does refer to Taluka, but the provision ""a belt of 2

kms. around the limits of the city of Panaji"" is crystal clear. By the said Notification the Administrator extended the provisions of the Act to a belt

of 2 kms. around the limits of city of Panaji and it does not matter whether this belt would cover some part of the other Taluka. The Appellate

Court has, on the basis of material on record come to the conclusion that the village of Penha de Franca is within 2 kms. around the limits of city of

Panaji; location of city of Mapusa at Bardez has no relevancy in view of the fact that it is within the limit of 2 kms. around the city of Panaji. Thus

the Appellate Court came to the conclusion that the jurisdiction of the civil Court was barred and the decree of eviction is a nullity. The findings of

the Appellate Court are well founded based upon material on record and Notification dated 30th September 1969 whereby the provisions of the

Act in question were extended to the belt of 2 kms. around the limits of city of Panaji. There is thus no question of any error committed by the

Appellate Court in construing the Notification dated 30th September 1969, as alleged by the appellants.

5. In view of the above, the second appeal is not admitted and is summarily rejected.

6. Second appeal rejected.