

Order below exhibit 2

(Delivered on this, the 27th day of the month of April, of the year
2018)

1. This order will dispose off an application filed by the applicants seeking relief under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure against the respondents.

2. The applicants have filed a petition under Section 33 of Goa, Daman & Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 hereinafter referred as Rent Control Act. It is the case of the applicants that there exists a building bearing House No.176, situated in the property "Meia XIV" denominated as "Chao Junta Bazar" surveyed under survey no.1/13 of village Assolna, Salcete Taluka. The applicants are claiming to be the tenants of the respondents as regards four shops located on the ground floor. The top roof of the building is covered with Mangalore tiles and first floor consists of wooden plank. The first floor is in possession and occupation of respondents and is being used by them for conducting indoor games like carom, billiards and other allied sports activities. It is claimed by the applicant that they are conducting business in the said shops. It is their case that said building originally belonged to one Felix Manuel Gomes Pinto and his wife Mrs. Maria Delfina Dumetilda Pereira and they sold it to respondent no.2 by Deed of Sale dated 04.08.1981.

3. It is pleaded that the applicant no.1 is the Lessee of Shop No.406 and is conducting business of grocery and is paying monthly rent of ₹.50/-. The applicant no.2 is the Lessee of Shop No.405 and is running the business of Bar and Restaurant and is paying monthly rent of ₹.100/-. The applicant no.3 is the Lessee of Shop No.404 and is

running the business of Restaurant and is paying monthly rent of ₹.45/-. The applicant no.4 is the Lessee of Shop No.403 and is selling fertilizer and other products and is paying rent of ₹.50/-. It is pleaded that roof of the said building consists of Mangalore tiles and it is in dilapidated condition and needs urgent repairs. It is pleaded that inspite of repeated request made by the applicants to the respondents for repairing the said roof, the respondents have not done the repair. It is pleaded that said roof exist in dangerous condition and it poses threat to human life. It is further pleaded that the applicants had addressed a letter to the respondents asking to do repairs. However, they failed to do so. It is pleaded that if the roof is not repaired, then in the coming monsoon there is high possibility of its collapsing. The applicants have prayed that permission may be granted to them to carry out repairs of the said roof at their costs which is approximately ₹.2 lakhs. Further they have prayed that respondents be restrained by way of permanent injunction from obstructing them from carrying out the repairs. The applicants have also filed an application for temporary injunction and have prayed that they may be granted permission to carry out the repairs of the said roof at their costs and have also prayed that the respondents be restrained by way of temporary injunction from obstructing them from carrying out the repairs.

4. The respondents have filed written statement resisting the claim of the applicants. The respondents have not admitted the applicants as their tenants. It is their claim that applicants are their licensee and hence are not entitled to do any repairs of the said building. It is pleaded that no lease deed as required under Section 34 of Rent Control Act has been executed between the applicants and the respondents. The respondents have denied the authenticity of the rent

receipts produced by the applicants to prove their claim of tenancy as regards the said building. It is stated that the applicants are not entitled for any relief of temporary injunction. It is prayed that application of the applicants be dismissed.

5. Arguments were advanced by both the sides. The advocate for the applicants has submitted that the present application is made in terms of Section 33 of Rent Control Act. It is submitted that Section 33 deals with the landlord's duty to keep the building in good repairs. It is submitted that when the landlord fails to keep the building in good repairs inspite of notice being given to him by the occupants of the premises, then the so called tenants have right to make repairs following the law as laid down in Act. It is submitted that as per Section 33 obligation is on the landlord to keep the tenanted premises in good habitation condition. It is submitted that the applicants have produced the rent receipts which clearly mentions that receipts of the rent of shop by the opponents. It is submitted that at the instance of respondent no.1 and the applicants, a legal notice was sent by advocate Shri Suresh Lotlikar on 28.11.1997 to the Deputy Director of Panchayat, South Goa complaining about the construction undertaken by one Savio C. D'Costa. It is stated that in the said notice the applicants are referred as tenants of respondent no.1. It is submitted that this notice was sent in the year 1997 and it fortifies applicants' claim of tenancy of the subject premises. It is submitted that the report prepared by the engineer Nllesh Laad clearly states that the roof of the building badly needs repairs and he has given the estimate cost of repairs amounting to ₹.2 lakhs. It is submitted that no prejudice will be caused to the respondents as applicants will bear the

cost of repair. It is prayed that in the interest of justice the application of the applicants be allowed.

6. The advocate for the respondents has submitted that the applicants are not the tenants of the respondents. It is submitted that this Court has no power to grant the interim relief as sought by the applicant. It is submitted that no agreement is produced by the applicants to prove that they are the tenants of the respondents. The advocate has read the definition of the tenant and has submitted that in terms of Section 2(p) of Goa, Daman & Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 to be a tenant of any building there should be a special contract between the landlord and the person claiming to be a tenant. It is submitted that there is no agreement produced on record by the applicants. It is submitted that inquiry has to be initiated first to hold the applicants as tenants. It is submitted that report produced by a civil engineer Arun R. Patil says that said building is dangerous for any occupation purpose and it is not safe for occupancy. It is submitted that to carry out repairs the applicants have to vacate the said premises temporarily till the completion of the repairs. It is submitted that no application for injunction can lie against the owner restraining him from interfering with his own building. It is submitted that the first floor is in occupation of the respondents and he cannot be restrained from doing his activity on the first floor. It is prayed that injunction application be dismissed.

7. This Court has gone through the contents of the application filed by the applicants, the written statement and the reply filed by the respondents, the report produced by the engineer of both sides and the arguments advanced and the rulings relied by the advocate of the applicants. The applicants in their application have prayed that they

may be permitted to repair the roof of the building which they are occupying as tenants of the respondents. The said building is situated in the property "Meia XIV" denominated as "Chao Junta Bazar" having house no.176, surveyed under survey no.1/13 of village Assolna, Salcete Taluka. The respondents have not disputed occupying of the shops on the ground floor of the building by the applicants. The respondents have disputed the tenancy claims of the applicants. The respondents have insisted on holding of inquiry for deciding the status of applicants. The respondents have also filed expert report. The report states that the said building is in a dangerous condition and unsafe for occupancy. In the report it is stated that for carrying out repairs, the occupants have to vacate the premises temporarily till the completion of the repairs. The applicants have produced photographs, rent receipts and notice issued by Senior Advocate Shri Suresh Lotlikar dated 28.11.1997. The said notice was issued to Deputy Director of Panchayat on behalf of respondent no.1 and all the applicants complaining about the construction undertaken by one Savio C. D'Costa in the adjacent property. In the said notice all the applicants are referred as tenants. The evidence produced before this Court has prima facie proved that the applicants are in possession of the suit shops situated on the ground floor of the building for many years. It is also proved by the applicants that roof of the building needs urgent repairs. This fact is also admitted by the respondents. The respondents are emphasizing on the fact that applicants should vacate the building for carrying out repairs. The applicants are reluctant to vacate the same as they have apprehension that if they vacate the same, the respondents will create hurdles for occupying the same again. In the course of arguments it was noticed that the respondents are reluctant to give any undertaking as regarding carrying out repairs

and the time needed for completion of repairs. At present considering the state of roof what is urgently needed is to do an act to preserve the building in good condition. If roof is not repaired then there are high chances that it may collapse in coming monsoon. Allowing the roof to remain in existing condition pose threat to human life and the property of the applicants. The applicants have stated that they will bear all the expenses of the repairs and will not claim the same from the respondents. Section 33 of The Rent Control Act cast duty on the landlord to keep the building in good condition. The said section also contains the procedure to be followed when the landlord neglects or fail to make the repairs. The Rent Control Act confers powers on the tenant to make repair when landlord fails to repair the building. The ruling relied by the applicants lawyer also supports the contention of the applicants that temporary injunction can be granted in favour of the tenants when suitable case is made out by the tenants for repairs of the building. The lawyer has placed reliance on the judgment passed in the case of **Shri Agostinho Joaquim Francisco Noronha and Ors. Vs. Premanand Gajanan Naik and Ors. of the Hon'ble High Court of Judicature at Bombay, Panaji Bench, Goa.** In instant case landlord that is respondents are reluctant to do the repair. The building has to be preserved so also human life has to be safeguarded from any mishap. By considering the evidence brought before this Court, this Court holds the view that the applicants have made out a case for grant of injunction as prayed.

8. In the backdrop of the aforesaid fact, this Court passes the following order:-

ORDER

The application filed by the applicants at exhibit 2 is allowed.

The applicants are granted permission to carry out the repairs to the roof of the building bearing House No.176, situated in the property "Meia XIV" denominated as "Chao Junta Bazar" surveyed under survey no.1/13 of village Assolna, Salcete Taluka.

The respondents are restrained from obstructing the applicants from carrying out the repairs to the roof of the said building.

(**N. S. Amonkar**)
Ist. Addl. Senior Civil Judge,
Margao.

Sp*