

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2278 OF 2017**

Deepak N. Gulwani	)	
Age 35 years, Occ Business	)	
At present R/o, Plot No.5-A,	)	
Kasturba Housing Society,	)	
Himgiri Apartment, Dhanori,	)	
Pune-Alandi Road, Vishrantwadi	)	
Pune – 411015	)	..Petitioner

Vs.

1 The Additional Commissioner	)
Pune, Region Pune	)

2 Shantaram Waman Randive	)
Age 67 years, Occu:- Retired	)
R/o, C-5, Flat No.2, Hermes Heritage,	)
Pune-Nagar Road,, Yerawada,	)
Pune 411 006	)

..Respondents

Mr. R. S. Kadam for the Petitioner
Mr. Akshay Tapkir for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 4th MAY, 2017

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The order dated 15-4-2014 passed below Exhibit 15, the order dated 8-5-2014 passed below Exhibit 18 and the order dated 29-9-2016 passed by the Revisionary Authority are taken exception to by way of the

above Petition. The first two orders are passed by the Competent Authority whereas the third order has been passed by the Additional Commissioner, Pune Division, Pune, by which order, the Revision Application filed by the Petitioner against the order dated 8-5-2014 came to be dismissed.

3 In so far as the order dated 15-4-2014 is concerned, the application Exhibit 15 filed by the Respondents came to be allowed and resultantly it was held that the proceedings will proceed exparte against the Opponent i.e. the Petitioner herein.

4 In so far as the order dated 8-5-2014 is concerned, the Competent Authority refused to take the Written Statement of the Petitioner on record as the same was not filed within 30 days of the receipt of the summons. As indicated above, the said order dated 8-5-2014 came to be challenged by the Petitioner by filing a Revision Application No.154 of 2014. The said Revision Application came to be dismissed by the Additional Commissioner by order dated 29-9-2016.

5 The controversy therefore revolves around whether the Petitioner can be permitted to file his Written Statement. In the said context, Section 43(4) of the Maharashtra Rent Control Act assumes importance. The same is reproduced hereinunder for the sake of ready reference:

43(4)(a):- The tenant or licensee on whom the summons is duly served in the ordinary or by registered post in the manner laid down in subsection (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

A reading of the said provisions therefore discloses that the Applicant has to file his appearance as also the application for leave to defend within 30 days of the summons being served upon him. If the appearance is not filed or the leave to defend is not granted, then the Competent Authority is required to proceed with the proceedings on the basis that the Opponent admits the case of the Applicant as set out in the application.

6 It is in the said context of the said statutory mandate that the facts of the instant case would have to be seen.

7 In the instant case, the summons was served upon the Petitioner on 10-3-2014. The Petitioner filed an application for leave to defend on 20-3-

2014. The said application came to be allowed by the Competent Authority by order dated 15-4-2014. The Petitioner thereafter ventured to file his Written Statement on 8-5-2014 but the Competent Authority refused to accept the same on the ground that the same was not filed within 30 days of the receipt of the same. Thereafter an order to proceed exparte came to be passed against the Petitioner as also the Revision Application filed by the Petitioner came to be dismissed.

8 In so far as the statutory mandate is concerned, the same contemplates the filing of the application for leave to defend within 30 days of the receipt of the Summons by the Opponent. Implicit in the said fact would be the fact that the said application has to be accompanied by the Written Statement which the Opponent is desirous of filing in the proceedings, as there is no separate provision for filing of the Written Statement and the period prescribed for the same. This has also to be considered in the context the proceedings before the Competent Authority are summary proceedings. In the instant case, there is no dispute about the fact that the application for leave to defend was filed on 20-3-2014 i.e. within 10 days of the summons being served, hence there was compliance in so far as Section 43(4)(a) of the said Act in the matter of filing of the application for leave to defend is concerned. However, thereafter the Petitioner ventured to file his Written Statement on 8-5-2014 which has not been accepted by the Competent Authority and has been

rejected on the ground that the same was not filed within 30 days of the receipt of the same.

9 The Learned Counsel appearing on behalf of the Petitioner faced with this situation on instructions states that the application for leave to defend which inter alia contains the grounds on which the Petitioner seeks to defend the proceedings may be directed to be treated as the Written Statement and the matter to proceed on the said basis.

10 In the facts and circumstances of the present case where the application for leave to defend was undisputedly filed within the time stipulated in Section 43(4)(a) of the said Act, though the same was not accompanied by the Written Statement, the indulgence as sought by the Learned Counsel for the Petitioner can be acceded to. Hence the application for leave to defend is directed to be treated as the Written Statement of the Petitioner original Opponent.

11 The Learned Counsel appearing on behalf of the Respondents i.e. the Applicants before the Competent Authority opposes the above Writ Petition and contend that the matter is being unduly delayed and that the Respondent No.2 is around 71 years of age.

12 In my view, the delay cannot be attributable to the Petitioner having regard to the fact that the Petitioner had filed the application for leave to defend with reasonable despatch and in fact within the time frame stipulated in Section 43(4)(a) of the said Act. In my view, the interest of justice would therefore be served if the following directions are issued:

(i) The application for leave to defend is directed to be treated as the Written Statement or the defence of the Petitioners i.e. the Opponent in the proceedings.

(ii) Resultantly the impugned orders dated 15-4-2014, 8-5-2014 and 29-9-2016, would stand set aside. The Competent Authority would proceed on the basis of the pleadings of the parties which would now comprise of the application for leave to defend which is to be treated as the defence of the Petitioner/Opponent. The proceedings would be tried on their own merits and in accordance with law.

(iii) The contentions of the parties on merits are kept open.

(iv) The Competent Authority having regard to the fact that the proceedings have been filed in the year 2013 is directed to hear and decide the same latest by 31-8-2017.

13 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]