

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.4911 OF 2017**

**Mrs. Eleanor Florence Noronha : Petitioner.**  
**versus**  
**V Sheshadri : Respondent.**

**Mr. Owen Menezes i/by Mr. Johnson John for the Petitioner.**  
**Mr. D S Jadhav for the Respondent.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 03<sup>rd</sup> MAY 2017**

**P.C.**

1           The orders dated 07/12/2015, 15/02/2016 passed by the Competent Authority and order dated 20/02/2017 passed by the Additional Commissioner, Konkan Division are taken exception to by way of the above Petition.

2           The first two orders passed by the Competent Authority relate to the production of documents and exhibition thereof in the trial before the Competent Authority in the proceedings filed under Section 24 of the Maharashtra Rent Control Act, 1999. The 3<sup>rd</sup> order i.e. order dated 20/02/2017 is passed by the Additional Commissioner, Konkan Division by which order the orders dated 17/12/2015 and 15/02/2016 rejecting the Applications for production of the documents and exhibition thereof, have been confirmed by the Additional Commissioner.

3           Hence the main order under challenge is the order dated 20/02/2017 passed by the Additional Commissioner. The said order has been challenged on the touchstone of Section 43(4)(a) of the said Act. It is required to be noted that in the instant case the Respondent herein has been denied leave to defend. The consequences thereof are mentioned in the said sub-section (4)(a) of Section 43 of the said Act. The consequences would be that the Competent Authority would have to proceed on the basis of the facts stated in the Applications as admitted and an order of eviction to be passed on the said basis. However, it seems that both the Competent Authority as well as the Revisionary Authority oblivious of the said statutory scheme as contained in Section 43 of the said Act have proceeded on the basis that a trial has to be conducted in respect of the Applications filed by the Petitioner under Section 24 of the said Act.

4           In so far as the said Section 43(4)(a) of the said Act is concerned, a reference could be made to the judgment of the Apex Court reported in (2003) 8 SCC 431 in the matter of Prakash H Jain v/s. Marie Fernandes (Ms). In the said case the Apex Court has held that the net result of an application/affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire

into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in Section 43(4)(a) of the said Act.

Hence the Competent Authority, if leave to defend is not granted to the Opponent has to proceed on the basis that the facts stated in the application are deemed to have been admitted.

5           Hence having regard to the statutory mandate, the impugned orders dated 07/12/2015, 15/02/2016 passed by the Competent Authority and the order dated 20/02/2017 passed by the Additional Commissioner, Konkan Division are not sustainable and would have to be quashed and set aside and are accordingly quashed and set aside. The Competent Authority is directed to proceed in accordance with Section 43(4)(a) of the said Act and adjudicate upon the said Application filed under Section 24 on the said basis. With the directions as aforesaid, the above Writ Petition is allowed and to stand disposed of on the said basis.

6           The learned counsel for the Respondent prays for the stay of the instant order. The instant order is stayed for a period of eight weeks from date on the usual undertaking to be filed in this Court within two weeks from date.

**[R.M.SAVANT, J]**