

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION [ST] NO.22477 OF 2018**

Rampyare Nanu Yadav	]	Petitioner
Vs.		
Minakshi Vijay Desai and others	]	Respondents

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Mr. Suhas Oak i/b Mr. Sandeep Mishra , for Petitioner.
Mr. Parag M. Tilak, for Respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 16TH OCTOBER, 2018.

P.C:

Heard Mr. Oak, learned Counsel for the petitioner and Mr. Tilak, learned Counsel for respondent No.1 at length.

2. Mr. Oak seeks leave to delete respondents No.2 and 3 on the ground that they are formal parties and no relief is sought against them. Leave as prayed for is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged;

[1] the judgment and order dated 21st February, 2018 (first order) passed by the Competent Authority (Rent Act) Konkan Division, Mumbai (for short 'Competent Authority').

[2] the judgment and order dated 21st February, 2018 (second order) passed by the Competent Authority by which the

Competent Authority allowed the application filed by the first respondent under section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and

[3] the order dated 30th July, 2018 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision Application No.224 of 2018.

4. By the first order, the Competent Authority rejected the application filed by the petitioner for leave to defend. By the second order, the Competent Authority allowed the application made by the first respondent under section 24 of the Act and directed the petitioner to hand over possession of Room No.106, Omkar Sadan, 1st floor, Shivtekdi, Kisan Nagar No.3, Road No.16, Wagle Estate Thane (West), Mumbai 400 604 (for short 'suit premises'). The petitioner was further directed to pay respondent No.1 arrears of monthly licence fees till 30th June, 2015 i.e till effective date of termination from issuance of legal notice dated 6th June, 2016 and double the rate of monthly licence fees i.e Rs. 5000x2=Rs. 10,000/- from 1st July, 2016 till vacant possession of the suit premises is delivered to respondent No.1. By order dated 30th July, 2018, the Commissioner rejected the revision application preferred by the petitioner.

5. Rule. Mr. Tilak waives service on behalf of respondent No.1. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

6. In support of this Petition, Mr. Oak submitted that the Competent Authority rejected the application for leave to defend substantially on the ground that the application for leave to defend was not verified as per the

provisions of Order-VI, Rules-14 and 15 of the Code of Civil Procedure, 1908 (for short 'C.P.C'). He submitted that the Competent Authority could have directed the petitioner to cure that defect and permitted the petitioner to verify the application. He submitted that it is not in dispute that the application for leave to defend was filed within the stipulated period. In support of this proposition, he relied on the decision in **Associates Journals Ltd Vs. Mysore Paper Mills Ltd., (2006) 6 Supreme Court Cases 197.**

7. Mr. Oak invited my attention to the Memo of Revision Application filed before the Commissioner and in particular paragraph 1 as also grounds (j) and (k). He submitted that the petitioner had challenged the first order whereby the Competent Authority rejected the leave to defend application on the ground that the application is not in conformity with section 43 (4) (a) of the Act. He submitted that the Commissioner while rejecting the revision application did not deal with this aspect. As the Commissioner has not dealt with aspect at all, this is a fit case for remitting the matter before the Commissioner. In support of this proposition, he relied on the decision of this Court in **Surendra B. Agarwal Vs. Aml Merchandising Pvt. Ltd., 2010 (1) Mh. L. J, 223.**

8. On the other hand, Mr. Tilak supported the impugned orders. He submitted that the provisions of section 43(4) (a) of the Act are mandatory in nature. He relied on following decisions;

[1] Prakash H. Jain Vs. Marie Fernandes (Ms) (2003) 8 Supreme Court Cases 431 and in particular paragraph 13.

[2] A.K.K. Nambiar Vs. Union of India, 1969 (3) Supreme Court Cases 864 and in particular paragraph 8 thereof,

Mr. Tilak submitted that section 43 (4) (a) of the Act lays down that the licensee on whom the summons is duly served in the ordinary way or by

registered post in the manner laid down in sub-section (3) is precluded from contesting the prayer for eviction from the premises, unless within thirty days of the service of summons on him, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority. On his failure in obtaining leave to defend, statements made by the landlord in the application for eviction are deemed to be admitted by the licensee and the applicant shall be entitled to an order for eviction on that ground. As the provisions of section 43 (4) (a) are held to be mandatory, it is required to be construed strictly. Admittedly, in the present case, though the application for leave to defend was filed within the stipulated period, the same was not verified by the petitioner. As the petitioner has not verified the application, it cannot be said that he has raised ground seeking to contest the application for leave to defend. He relied on paragraph 9 of **Surendra Agarwal's case** (supra) where also the learned Single Judge observed that the provisions of section 43 (4) (a) are mandatory.

9. As noted earlier, the Competent Authority has declined to grant leave to defend principally on the ground that the application for leave to defend is not verified. The question is whether Competent Authority has authority to direct the petitioner to rectify the mistake by permitting verification of the application for leave to defend. The Authorities below have not dealt with this aspect. Even order of the Commissioner does not deal with the grounds raised by the petitioner in challenging the first order passed by the Competent Authority, whereby leave to defend was rejected.

10. In view thereof, the impugned orders are liable to be set aside, thereby, restoring the application filed by the petitioner seeking leave to defend. The Competent Authority will hear the parties and will consider whether it has power to direct the petitioner herein to verify the application

which is already filed on record. The Competent Authority thereafter will proceed with the matter on merits. All contentions of the parties are expressly kept open. Learned Counsel for the parties assure that they will appear before the Competent Authority on 19th November, 2018 and for that purpose, no fresh notice be issued to them. The Competent Authority will fix a suitable date and thereafter will proceed to decide proceedings within 8 weeks from the date so fixed. Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]