

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.579 OF 2022

Laxman Dadasaheb Jagtap] ... Petitioner

Vs.

Additional Commissioner, Kokan]
Division, Mumbai & Anr.] ... Respondents

...

Mr. Deepak Pandey for the petitioner.

Mr. P.P. Pujari, A.G.P. for the State.

Mr. Lokesh Zade for respondent No.3.

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 19TH JANUARY, 2022.

P.C. :-

1. Rule. Rule made returnable forthwith and, heard finally, by the consent of the parties.

2. The petitioner is the original respondent in Application No.97 of 2017 filed by respondent No.3, original applicant, before

the competent authority, under the Maharashtra Rent Control Act, 1999 (“**the Rent Act**”, for short). His grievance is that his leave to defend was belated by one day and the day, on which the limitation period of 30 days expired, was a Sunday and, therefore, a holiday. Section 4 of the Limitation Act, would apply in such a case and, he would get the benefit of one day.

3. There is no dispute that, the petitioner was served with the summons issued by the authority dealing with the eviction application, on 25/10/2019. The petitioner then was a police officer. He appeared before the authority on 15/11/2019 and sought an adjournment. The adjournment was granted and the matter was posted on 25/11/2019.

4. There is no dispute that the date, on which the summons was served on the petitioner, is the day, which has to be excluded while computing the 30 days’ limitation period. As such, the period of 30 days, will have to be computed, by including 26/10/2019 as the first day. The six days expired on 31/10/2019 and the reminder 24 days expired on 24/11/2019, which is a Sunday.

5. When the matter appeared on 25/11/2019, it is undisputed that, the petitioner filed yet another adjournment application at Exh.-7, which was rejected by the authority. Thereafter, the petitioner filed an application at Exh.-8, titled as ‘*Application to Leave to Defend*’. The said application is dated 25/11/2019,

which is supported by a simple verification, which reads as under:

“VERIFICATION

I MR. LAXMAN DADASAHEB JAGTAP, Room No.24, D3, E wing, 5th floor, Sahyadri Nagar, Charkop, Kandivali (West), Mumbai 400 067, do hereby state and declare on solemn affirmation as whatever stated hereinabove is true and correct to the best of my knowledge and belief.

*Sd/-
Respondent.*

*Dated : 25/11/2019
Mumbai.”*

6. There is no dispute that the learned advocate for the petitioner, before the competent authority, has neither signed below the said application, Exh.-8, nor has he signed below the verification. The signature of the petitioner appears below the application and below the verification. The said verification clause has not been affirmed before any authority, empowered to administer the oath in support of the verification, so as to be treated, as an affidavit.

7. There is no doubt that 24/11/2019 was a Sunday and, therefore, a holiday. On 25/11/2019, the petitioner had sought an adjournment, vide application, Exh.-7, which was rejected on the

same day. He, therefore, filed application, Exh.-8, for seeking leave to defend.

8. Section 43(4)(a) and (b) of the Maharashtra Rent Control Act, 1999 read as under:

“43. Special procedure for disposal of applications:

(4) (a) The tenant or 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) 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,

(b) The Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24.”

9. Section 4 of the Limitation Act reads as under:

“4. Expiry of prescribed period when court is closed. - *Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.”*

10. Though the learned advocate for the petitioner, at first blush, would appear to be right in placing reliance upon Section 4 of the Limitation Act, the issues that need to be considered are, (a) whether Section 5 of the Limitation Act would be applicable to the case of the petitioner and, (b) whether application, Exh.-8, seeking leave to defend, could be termed to be an application, in the eyes of law, in the absence of an affidavit or even a verification not affirmed before an oath administering authority.

11. In **Prakash H. Jain v. Ms. Marie Fernandes**¹, the Hon’ble Apex Court has held that the competent authority cannot be mistaken to be a ‘court’. The authority has a limited scope and a specific purpose under the Act and it cannot be deemed to be a ‘court’ for invoking Section 5 of the Limitation Act. A similar view was taken in **Sunda Associates v. Ajit Kisanlal Agarwal**², wherein it was held that the authority cannot be deemed to be a ‘court’ and the delay of even one day, cannot be condoned. Same is the view taken in **Naranji Bhimji Family**

¹ 2003 AIR SCW 5378

² 2005 (3) Mah.L.J. 362

Trust, Nagpur v. Additional Commissioner, Nagpur & Ors.³

12. In view of the above, Section 4 of the Limitation Act could rescue the petitioner, as 24/11/2019 was a Sunday and even 23/11/2019 was a non-working Saturday (the Fourth Saturday). However, it would have to be seen, whether Exh.-8, can be said to be an application, in the eyes of law. In the entire pleadings in the memo of petition, there has not been a whisper that, Exh.-8 was supported with an affidavit that was sworn before an oath administering authority or a notary on or before 25/11/2019. Even a glance at Exh.-8, which is placed on record, would indicate that even the lawyer has not identified the petitioner on the last page of the application. The signature of the petitioner is found at two places with no signature of the lawyer, identifying the petitioner, much less an affidavit in support of Exh.-8.

13. In **Amitabh s/o. Ramsharan Nigam v. Amit Raghunandan Saran Sharma & Ors.**⁴, it has been held that the requirement under Section 43(4)(a) of the Rent Act is mandatory in nature. An application filed by the counsel, bearing his signature, seeking leave to defend, does not satisfy the strict requirement of the said provision. No affidavit was filed by the petitioner. Hence, refusing to grant leave to defend was proper, as the petitioner did

³ 2015 (4) Mh.L.J. 538

⁴ 2020 (3) All M.R. 188

not satisfy the strict requirement of Section 43(4)(a) of the Rent Act.

14. In view of the above, it is obvious that Exh.-8, without the mandatory affidavit, would not be an application, which is within the strict prescription of law. In fact, the language used in Section 43(4)(a) requires an affidavit to be filed and not a mere application. As such, though Section 4 of the Limitation Act may have rescued the petitioner, the absence of an affidavit, which is mandatory, would render the said application non-existent in the eyes of law.

15. In view of the above, this petition being devoid of merits, is, therefore, dismissed.

16. Rule is discharged.

[RAVINDRA V. GHUGE, J.]