

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2992 OF 2022**

Mr. Omkar Nitin Joshi

....Petitioner

Versus

Mr. Dashrath Laxman Shivarkar & ors.

....Respondents

...

Mr. Sarthak S. Diwan Advocate for the Petitioner.

Mr. A.A. Devkhile Advocate for the Respondents.

...

CORAM : S. G. DIGE, J.

DATE : 13TH FEBRUARY, 2023.

P.C. :

1. Rule. Rule made returnable forthwith. Heard finally at admission stage by the consent of both parties.

2. It is contention of learned counsel for the petitioner that the Competent Authority below order Exhibit-32 has passed the order and rejected the application for eviction filed by the petitioner is rejected.

3. Learned counsel further submits that the Respondents have not filed application for leave to file written statement as

provided under Section 43 (4) (a) of Maharashtra Rent Control Act, 1999 (for short “the said Act”). In the absence of leave to defend the Petitioner’s Application would have been allowed under Section 43 (4) (a) of the said Act, but it was rejected. Hence, requested to allow the writ petition.

4. It is contention of learned counsel for Respondents that a joint pursis was filed by the Petitioner and Respondents before the Revisional Authority that both parties would appear before the Competent Authority and go on with the matter. Accordingly, the respondent filed written statement before the Competent Authority. It was not necessary to file Application for leave to defend, as joint pursis was filed before the Revisional Authority. The order passed by the competent authority is legal and valid.

5. I have heard both learned counsel. Perused the impugned order.

6. The issue involved in this Writ Petition is whether in view of the joint pursis filed before the Competent Authority dated 17th April 2017, the leave to defend application was necessary or not.

7. In my view, initially ex-parte order was passed by the Competent authority against the Respondents. It was challenged before the Revisional Authority. The joint pursis was filed before the Revisional Authority by both the parties that they will go on with the matter on merits. Accordingly, Revisional Authority passed the order on 17th April 2017 and remanded the matter. After remand, the Respondents filed Written Statement before the Competent Authority. Meanwhile, the Petitioner filed Application to allow the Application on the ground that no Application was filed for leave to defend as contemplated under Section 43 (4) (a) of Rent Act. Considering, the peculiar facts of the case, in my view, if writ Petition is allowed and direction is given to the Respondents to file Application for leave to defend as contemplated under Section 43 (4) (a) of the Act and decide it on its own merit, would meets the ends of justice and I pass following order.

ORDER

- I. Writ petition is allowed.
- ii. The order passed by the the competent authority below

Exh. 32 dated 23rd December 2021 is quashed and set aside.

- iii. Respondents shall file application for leave to defend before the competent authority. The petitioner shall not raise the ground of limitation regarding that application. The said application shall be decided on its own merits.
- iv. The competent authority is requested to decide the proceedings as early as possible.
- v. Writ Petition is disposed of.

(S. G. DIGE, J.)