

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8544 OF 2015**

The Chief Electoral Officer	]	
Maharashtra State,	]	
G.A.D. 6th Floor,	]	
Mantralaya, Mumbai – 400 032	]	]..... Petitioner.

Versus

M/s. Prag Computer Services	]	
Through its Proprietor	]	
Shri Vivek M Prani	]	
6, Swasti Apartment,	]	
1/6, Yerandavane, Pune-4	]	]..... Respondent.

Mr. S K Shinde for the Petitioner.
Mr. A M Gosavi for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 08th September 2015

ORAL JUDGMENT

1 Rule, having regard to the nature of the challenge raised made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 22/07/2015 passed by the learned 6th Joint Civil Judge, Senior Division, Pune, by which order the application (Exhibit 1) filed by the Petitioner seeking condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure came to be rejected.

3 The Respondent herein is the original Plaintiff in the suit in

question being Special Civil Suit No.1913 of 2009 which was filed for recovery of an amount of Rs.Twenty Five Crores. The said amount is claimed on the basis that the Respondent was given a contract of preparing electoral roll for the Loksabha Elections for the year 1999. It is the case of the Respondent that the said work was executed by it for the election officers in three Districts of the State for which work the Plaintiff billed the State for an amount of Rs.Twenty Three Lacs and Eighty Thousand and on demand being made since the said amount was not paid, the Plaintiff was constrained to file the suit in question where, as indicated above, the amount of Rs. Twenty Five Crores was claimed which included the damages.

4 It appears that in the said suit the summons came to be served on the Petitioner herein i.e. the Defendant in the suit and it seems that the representative appeared in the suit on 24/01/2014 and had sought time. However, thereafter no appearance was put up on behalf of the Defendant and ultimately the suit came to be decreed on 14/08/2014 in the sum of Rs.Twenty Three Lacs Eighty Thousand with 12% interest from the year 2000 till realization.

5 It is the case of the Defendant i.e. the Petitioner herein that they got the knowledge of the decree on 22/01/2015 when the notice of the execution was served upon him, and thereafter the instant application came to

be filed seeking condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure. The said application was replied to on behalf of the original Plaintiff.

6 The Trial Court considered the said application and by the impugned order rejected the said application. A reading of the said order discloses that the Trial Court has delved into the merits of the case of the Defendant i.e. the Petitioner herein in so far as the setting aside of the decree is concerned, but has not considered the case of the Defendant for condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure. In the instant case, it is the case of the Defendant that he acquired knowledge of the decree on 22/01/2015 and thereafter the application was filed on 21/02/2015. If the said dates are taken into consideration then in terms of the limitation prescribed for filing of the application under Order IX Rule 13 of the Code of Civil Procedure, it cannot be said that there was any delay in filing the said application.

7 Be that as it may, in the instant case, as the record discloses that no appearance was put up on behalf of the Defendant in the suit in question despite the representative from the office of the Defendant remaining present on 24/01/2014. Hence the explanation sought to be given on behalf of the Defendant that the Defendant became aware of the decree only on

22/01/2015 seems to be a plausible explanation in so far as acquiring knowledge of the decree is concerned as in the absence of the Defendant being represented before the Trial Court, the knowledge could not be attributed to the Defendant. It is well settled that in matters of condonation of delay, some indulgence is required to be shown to the State as some time is lost in the usual clearance of files on account of which delay takes place before a final decision is taken. In my view, therefore the Trial Court has erred in rejecting the application seeking condonation of delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure. The impugned order dated 22/07/2015 passed by the learned 6th Joint Civil Judge, Senior Division, Pune would therefore have to be quashed and set aside and is accordingly set aside in turn the application for condonation of delay in filing the application under Order IX Rule 13 would stand allowed. In the facts and circumstances of the present case, the State is directed to pay costs of Rs.5,000/- to the Respondent herein within four weeks from date. Since the delay in filing the application under Order IX Rule 13 of the Code of Civil Procedure has been condoned, the said application to be numbered and to be heard and decided latest by 31/10/2015. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Judgment.