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

WRIT PETITION NO.7245 OF 2016.

Nishigandh Sahaniwas Co-operative Housing
Society Ltd.

... Petitioner

V/s.

Smt. Kusum Venkatesh Shet and anr

... Respondents

**WITH
CIVIL APPLICATION NO. 2280 OF 2016
IN
WRIT PETITION LNO.7245 OF 2016**

Kusum Venkatesh Shet

.. Applicant

-vs-

Vitthal Saudagar and anr

... Respondents.

**WITH
CIVIL APPLICATION NO.1225 OF 2017
IN
WRIT PETITION NO.7245 OF 2016.**

Nishigandh Sahaniwas Co-operative Housing
Society Ltd.

... Applicant.

V/s.

Smt. Kusum Venkatesh Shet and anr

... Respondents

**WITH
CIVIL APPLICATION NO.1310 OF 2017
IN
WRIT PETITION NO.7245 OF 2016.**

Nishigandh Sahaniwas Co-operative Housing
Society Ltd.

... Applicant.

V/s.

Smt. Kusum Venkatesh Shet and anr

... Respondents

Mr. Vikas V. Warerkar, i/by Warerkar &
Warerkar, for the Petitioner
Ms. Shobha Shet, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioner and learned
counsel for respondents.

2] By this writ petition, the petitioner is challenging the
order dated 26th February, 2016 passed by the Member, Maharashtra
State Co-operative Appellate Court, Mumbai, thereby rejecting
application filed by the petitioner under Order IX Rule 13 of the Code
of Civil Procedure. The said application was filed by the petitioner for
setting aside the exparte judgment passed in R.A. No.12 of 2015 and
for restoration of the said Revision.

3] The ground taken for setting aside the exparte judgment
under Order IX Rule 13 of CPC was that the notice of the said Revision
was not duly served on the applicant society. However, order passed
by the Appellate Court reveals that the said notice was duly tendered

and returned with the remark “unclaimed”. The affidavit of the respondent to that effect was filed on record. Moreover letter issued by postal department marked as Exhibit “A” dated 8.2.2016 was also produced on record to show that the intimation was served on the addressee on 2.3.2015, but due to non collection of Registered Letter by the addressee within the stipulated time, the said letter was returned to sender on 11.03.2015. Alongwith affidavit of service filed by respondent, there is postal acknowledgement showing that registered letter has been returned to sender on 11.3.2015 with the remark, “unclaimed”.

4] According to learned counsel for the petitioner, as per affidavit of service filed by respondent, letter was tendered to one Mr. Vitthal Saudagar, Member Administrative Board/Committee of opponent society, who refused to accept the notice. However, the affidavit of this Vitthal Saudagar is filed on record by the petitioner showing that no such letter was tendered to him. According to learned counsel for petitioner this aspect was not considered by the Appellate Court.

5] However, in considered of opinion of this Court, even if the affidavit of service is not accepted or not relied, the letter issued by Sub Post Master (HSG), Bandra (East), Post office, Mumbai dated 8.2.2016, cannot be disbelieved or discarded and this letter clearly

goes to show that the notice was served on the addressee on 2.3.2015. However, it was not collected and hence it was returned as “unclaimed”

6] In view of this, learned Appellate Court has not committed any error or illegality in rejecting the petitioner's application filed under Order IX Rule 13 of Code of Civil Procedure for setting aside the exparte judgment and for restoration of Revision.

7] The Writ Petition, therefore, holds no merit stands dismissed.

8] In view of dismissal of Writ Petition, Civil Application Nos.2280 of 2016, 1225 of 2017 and 1310 of 2017 do not survive and the same are accordingly disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]