

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

WRIT PETITION NO. 3404 OF 2016

Vishal Sharadchandra Bhogate	...Petitioner
Versus	
Shri.Ketan Mohanlal Patel & Anr.	...Respondents

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Mr.M.Saeed Kadu for the Petitioner.
Mr.Chetan G. Patil for Respondent No.1.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 04, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 26.08.2015 passed by the learned Jt. Civil Judge, Kolhapur in Civil Misc. Application No. 350 of 2015 in Special Civil Suit No. 276 of 2007.

3. Respondent no.1/original plaintiff had filed a Suit for specific performance of contract. In the said Suit, the petitioner and respondent no.2 are the father and son and they were made parties to the proceedings. The petitioner and respondent no.2 were served summons. However, they did not appear before the trial Court and the said Suit was decreed as ex-parte on 22.04.2013. The execution

proceedings in Special Darkhast No. 24 of 2013 was filed and it was served on the petitioner on 02.09.2013. The petitioner became aware of the judgment and decree passed by the trial Court and therefore, according to him, he approached the trial Court for setting aside the ex-parte order alongwith the application for condonation of delay. The said application was heard and it was rejected by the learned Civil Judge, Kolhapur by an order dated 26.08.2015. Hence, this Writ Petition.

4. The learned counsel for the petitioner submits that after service of the notice in execution proceedings, he had knowledge of the ex-parte judgment and decree passed in said the Suit and therefore, he obtained the certified copies and approached the lawyer. At the relevant time, the lawyers were on strike for nearly two months, which was followed by Diwali vacation and hence the matter was delayed. He has moved an application for condonation of delay alongwith the petition to set aside the ex-parte order. He further submits that summons of the Suit was not served on the petitioner and the delay of six months be condoned.

5. Per contra, the learned counsel for the respondents submits that while deciding this matter nothing can be faulted with the order passed by the learned Judge rejecting the application for condonation of delay.

He further submits that the petitioner is a son and he was served summons of the Suit through his father. He relies on the bailiff report, in which the bailiff on oath has mentioned that he has served summons of the Suit to the father i.e. respondent no.2 and has accepted his summons and also summons of his son i.e. the petitioner. He further submits that under Order 5 Rule 15 of the Code of Civil Procedure, respondent no.2 is an adult member of the family, who was served. Hence, the petitioner was deemed to be served. He further submits that the petitioner has suppressed this fact and made a false statement in the application for condonation of delay. He further submits that the person who prayed for condonation of delay should show his bonafides and there should be a sufficient cause to grant delay. In support of his submission, he relies on the decision of the Supreme Court in the case of **Basawraj & Anr. Versus Special Land Acquisition Officer**, reported in **(2013) 14 SCC 81**.

6. Heard submissions, Perused the impugned order and considered the ratio laid down in **Basawraj & Anr.** (supra). In **Basawraj & Anr.** (supra), an award was passed on 28.02.2002 in the Land Acquisition Act and the appeal challenging the said award was filed on 16.08.2007 before the High Court. The High Court has dismissed the said appeal and also the application for condonation of delay, as sufficient cause was not shown. The Supreme Court while upholding the order passed

by the High Court has held that if a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be justified ground to condone the delay. The submission made by the learned counsel for the petitioner that he was not aware about the judgment and decree passed in the said Suit and had knowledge about the judgment and decree passed in the Suit only when the notice in the execution proceedings was served on him. I do not want to go into merits of the application, which is preferred by the party for setting aside the ex-parte order, which can be heard and decided on merits by the trial Court. It appears that in Kolhapur the lawyers were on strike for two months, which was followed by Diwali vacation. There is a delay of six months in making the application. It appears that there is a sufficient cause to allow the application for condonation of delay of six months with costs. The order dated 26.08.2015 passed by the learned Jt. Civil Judge, Kolhapur is hereby set aside. The delay is condoned, subject to payment of costs of Rs. 10,000/- to respondent no.1 in the trial Court. The said costs is to be paid within a period of four weeks.

7. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)