

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11758 OF 2017**

Asha P Mehta	...Petitioner
<i>Versus</i>	
Vidyashankar Kulluram Singh	...Respondent

**Mr Ranjit Thorat, Senior Advocate, i/b Aditi S Naikare, for the
Petitioner.**

Mr RD Mishra, for the Respondent.

**CORAM: G.S. PATEL, J
DATED: 9th November 2017**

PC:-

1. Heard.

2. The Petition is directed against an order of 7th July 2017 of the Appellate Bench of the Small Causes Court, Mumbai. The Appellant was the original Defendant. The premises in question are room no.21, Vidya Niwas, KR Singh Estate, Bhattipada Cross Road, Bhandup (W), Mumbai 400 078. The Defendant's case is that she was away and when, on 18th September 2014, she returned to the suit premises, she found the lock changed. The Plaintiff landlord had taken possession in execution of an *ex parte* decree. She sought a certified copy and received this on 29th October 2014. She then applied to have that *ex parte* decree set aside on the ground that the summons was not served

in accordance with law. She said that the service of the summons was “managed” by the Plaintiff in connivance with the bailiff. She placed on record her ration card, electricity bill and election identity card.

3. The record showed that on repeated attempts the bailiff did not find the Defendant at the suit premises. The allegation was, again, that the reports were stereotyped and that the bailiff had been “managed”. The Appellate Court found from the bailiff reports, filed as Exhibit-7, that the bailiff went to effect service on more than one occasion: 27th August 2010, 16th November 2010 and 14th February 2011. On each occasion the Defendant was unavailable. The bailiff enquired with neighbours. One of them, one Ramalaxmi, said that the Defendant had gone out with no fixed time of return. Sometime later, on 11th April 2012, Ramalaxmi told the bailiff that the Defendant had gone out of Mumbai with no known return date. Another report of 22nd September 2011 indicates that the Defendant was not present in the suit premises and another person one Bitika Moitro said to the bailiff that the Defendant had quit the premises a long time ago and that her address was unknown.

4. The ground for eviction was firstly *bona fide* requirement and also non-payment of rent.

5. Mr Thorat for the Petitioner urges that the substituted service by pasting was wholly improper once it is shown that the Defendant was very much present in the premises.

6. I am unable to understand this. It is not as if the bailiff made only one attempt. He went there repeatedly. The suit was filed in 2010

and was not decreed for another four years despite the Defendant not appearing. It is unconceivable that this could be said to be improper service. I find that even in the Petition there is no explanation whatsoever for the Defendant's absence from the date of filing of the suit onwards. What the Plaintiff does say in paragraph 6 is that she was away at her native place in September 2014 and found the premises locked with the lock changed when on her return. There is no explanation whatsoever for her non-availability for two or three years between 2010 and 2012.

7. It also does not end at that because there was an attempt to serve the Defendant by registered post and the acknowledgement card was returned unclaimed. It was after all of this that substituted service by pasting was effected. The Appellate Court therefore held that the Defendant had not demonstrated sufficient cause for non-appearance and had in fact not come forward to examine herself and other witnesses though granted an opportunity.

8. There is another discussion in the Appellate order about the power of attorney granted by the Defendant but that will not materially affect the outcome.

9. I see no infirmity or calls for interference in the Appellate order.

10. The Writ Petition is rejected. There will be no order as to costs.

(G. S. PATEL, J.)