

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

WRIT PETITION NO. 1357 OF 2018

Santosh Babasaheb Kitture	...	Petitioner
V/s.		
Mahalaxmi Agency		
Through Proprietor		
Shankar Hiralal Kalika	...	Respondent

- Mr.Nitin B. Patil for the Petitioner.
- Mr.Shrikrishna R. Ganbavale for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 17th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 8th January 2018 passed by the Civil Judge Senior Division, Ichalkaranji, below the application at Exhibit-29 in Special Summary Suit No.1 of 2016.

3] The application at Exhibit-29 was filed by the present applicant, who is the defendant before the Trial Court for condonation

of delay in filing an application for leave to defend the suit vide Order-37 Rule2 (3) of the Code of Civil Procedure, 1908 (for short, "C.P.C."). The said application, however, came to be rejected by the trial Court; hence the instant Writ Petition.

4] As per the case of the Petitioner, he had not received the copy of summons, affidavit and the judgment summons and therefore, there was delay in filing the application for leave to defend the suit. Admittedly, the notice of the Criminal Case was received by the Petitioner on the said address. Therefore, the trial Court was right in holding that the Petitioner has received the summons. However, in my considered opinion, the fact remains that the service of summons was by way of affixing it as per bailiff report Exhibit-8 and hence, there is delay on account thereof for the Petitioner to appear in the matter. Hence, considering that the summons of judgment was not served on him personally, the delay in preferring the application needs to be condoned in the interest of substantive cause of justice. In order to compensate the Respondent, however, it is necessary to impose certain costs so that the balance of justice will be maintained equally and the matter can be proceeded on merits of the case.

5] Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court is set-aside.

6] The application filed by the Petitioner at Exhibit-29 for condonation of delay in filing an application for leave to defend the suit is allowed subject to the Petitioner paying the costs of Rs.10,000/- (Rs.Ten Thousand only) to the Respondent or depositing the said costs in the Trial Court within the period of four weeks from the receipt of the authenticated copy of this order by the Trial Court.

7] The Petitioner to provide the authenticated copy of this order to the Trial Court. Needless to state that, thereafter, the Trial Court will decide the application of the Petitioner for leave to defend as expeditiously as possible. In case of failure on the part of the Petitioner to pay the costs within stipulated period, this order will stand automatically vacated.

8] The parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]