

psv

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

WRIT PETITION NO.6748 OF 2013

Shri. Sharad Vishwanath Pradhan	..Petitioner
Vs.	
Smt.Vastala Raghunath Patil	..Respondent

Mr.Kiran Joshi for Petitioner.
Mr.Rahul S. Kadam with Mr.Amit Gadkari for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 15th JANUARY, 2018

P.C.:

Challenge in this petition is to the order dated 4th July 2012 passed by the IInd Joint Civil Judge, Junior Division, Kalyan, whereby the application of the petitioner praying for condonation of delay in setting aside ex-parte judgment stands rejected.

2. After having heard the learned Counsel for the parties, it is quite apparent that the impugned order dated 4th July 2012 has been passed by the learned Judge without any consideration to the specific provisions of the Article 123 of the Limitation Act which provides for a limitation of 30 days on two counts, firstly from the date of the decree or where the summons or notice was not duly served, when the

petitioner had knowledge of the decree. The explanation to Article 123 of the Limitation Act also provides that the substituted service under Order 5 Rule 20 of the Code of Civil Procedure shall not be deemed to be due service for the purposes of the said provisions.

3. The provisions of Article 123 were relevant and more particularly in view of paragraph 4 of the judgment and order dated 17th March 2009 of the learned trial Court which records that the suit summons was served on the petitioner/org.defendant however, despite of such service, the petitioner/org.defendant had not appeared and thus, further direction for service under Order 5 Rule 20 of the CPC was issued, in pursuance of which the summons was published in local newspaper and thus, there was a valid service of the suit summons on the petitioner/org. defendant. The petitioner/org.defendant has disputed the service of the summons before publication and thus, has rested his case on the date of knowledge of the decree. According to the petitioner/org. defendant, the petitioner has received the knowledge of the decree only on 10th October 2009 which was subsequent to the date on which the decree was executed on 8th October 2009 and possession of the suit premises was delivered to the respondent/plaintiff by bailiff of the Court. My attention has been drawn to the relevant dates and paragraph 25 of the petition which reads thus:-

“25. The Petitioner states that the following are the

dates, which will make the picture clear as to how and in what manner the judgment and decree was passed in the present matter.

	<u>DESCRIPTION</u>	<u>DATE</u>
1.	Filing of the suit by the Respondent for possession under Maharashtra Rent Control Act 1999. The suit is numbered as R.C.S. 320/2007	4.7.2007
2.	The above suit was ex-parte decree on	17.3.2009
3.	The Respondent filed execution proceeding and it is numbered as R.D. No.33/2009	(In or about June/July 2009 – No exact date is available)
4.	The decree was executed and the possession of the suit premises was delivered to the Respondent by the bailiff of the court.	8.10.2009
5.	The Petitioner had first knowledge of the decree passed	10.10.2009
6.	The Petitioner filed a complaint in police station immediately on	10.10.2009
7.	The Petitioner had applied for certified copy on	14.10.2009
8.	The certified copies were ready and delivered on	15.10.2009
9.	The diwali vacation	17.10.2009 to 25.10.2009
10.	The Petitioner filed the Misc. Application for setting aside ex-parte decree on	26.10.2009”

4. A perusal of the impugned order shows that the trial Court however has failed to address the basic issue as urged by the petitioner/org. Defendant. Considering the specific provisions of Article 123 of the Limitation Act, the reasoning set out in paragraph Nos.6 to 8

of the impugned order, in my opinion, would not address the real issue in controversy or to say the least the observations are completely irrelevant. In the circumstances, there is no alternative but to set aside the impugned order dated 4th July, 2012 dismissing the application of the petitioner for condonation of delay. The application of the petitioner is accordingly restored and remanded back to the trial Court to be decided afresh in accordance with law, and on due consideration to the provision of Article 123 of the Limitation Act, as noted above.

5. All contentions of the parties on merits of the matter are expressly kept open.

6. Let the application of the petitioner be decided within a period of four weeks from today.

7. Writ Petition is allowed in the aforesaid terms. No costs.

[G.S. KULKARNI, J.]