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

**APPEAL FROM ORDER (ST) NO.21729 OF 2018
WITH
CIVIL APPLICATION (ST) NO.21730 OF 2018
IN
APPEAL FROM ORDER (ST) NO.21729 OF 2018**

Mohammad Ismail Rangari ... Appellant.
V/s.
Raj Jayram Kochar
@ Raj Kochar ... Respondent

Mr. Karl Tamboli a/w Mr. Hamid, Mr. Arunraj, Ms
Saloni, i/by Diamondwala & Co., for the appellant.
Mr. Induprakash Tripathi a/w Ms. Bhagyashri Gawas,
for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd SEPTEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondent.
- 2] This appeal takes an exception to the order dated 28.06.2018, passed by City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.2530 filed in R.C.Suit No.2250 of 2012.
- 3] The said Notice of Motion was taken out by the Appellant herein, seeking stay to the exparte decree passed in the said suit and for restoration of the said suit to it's original stage.
- 4] The submission of learned counsel for appellant is that the

trial Court has rejected the said Notice of Motion, mainly on the ground that the Notice of Motion is not filed within the period of limitation of 30 days from the date of passing of the decree.

5] In this respect, learned counsel for the appellant has pointed out the provisions of Article 123 of the Limitation Act, which provide the period of 30 days to set aside the decree passed exparte, from the date of order and if summons or notice was not duly served then from the knowledge of the decree. The Explanation to said Article clearly provides that for the purpose of this Article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 shall not be deemed to be due service.

6] Here in the case admittedly service of summons on the appellant herein was by substituted service under Order V rule 20 of Code of Civil Procedure, by affixing copy of the summons to the conspicuous part of the premises where the appellant is residing.

7] Therefore, in case of such substituted service of Summons, the period of limitation will start when the appellant had got knowledge about the same and according to him, he got the said knowledge on 19.7.2016 and within 30 days therefrom, he has filed the suit.

8] In view thereof, it has to be held that the trial Court has committed an error in holding that the Notice of Motion is barred

by the law of limitation.

9] According to learned counsel for respondent, the trial Court has dismissed the Notice of Motion not only because of it being barred by limitation, but also on merits. However, in my considered opinion the trial Court's order does not specifically state so. Conversely, it states that, "the Summons was served by pasting on the conspicuous part of the appellant's premises. In such situation, it follows that the Notice of Motion was within the limitation". Therefore, the proper course would be to relegate the parties to the trial Court to decide the Notice of Motion on merits.

10] Accordingly the Appeal from Order is allowed to the extent of holding that the Notice of Motion taken out by the appellant before trial Court was within the limitation. Hence, the trial Court is directed to decide it on merits, as expeditiously as possible and preferably within a period of six weeks, in accordance with law.

11] As regards the request made by learned counsel for the appellant for stay to the execution of the decree, the appellant is at liberty to take appropriate steps before the trial Court.

12] In view of disposal of appeal, Civil Application therein becomes infructuous and the same is accordingly stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]