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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3460 OF 2021**

The Maharashtra Small Scale
Industries Development Corporation Limited Petitioner.

V/s

M/s Uma Engineering,
Proprietary concern
Through
Shri Ulhas Madhukar Jadhav & Ors. Respondents.

Mr. Pralhad P. Paranjape for the Petitioner.

Mr. Narayan Sahu with Mr. Chirag Dave i/b Legasis Partners for the
Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 09, 2021

P.C.:-

1] Petitioner – State Government Undertaking procured Milk Cans and also got them maintained/repared from the Respondents. As certain dues were outstanding, it is claimed that Respondents were prompted to file a suit for recovery which came to be decreed on 11th March, 2015. Claiming that the said ex-parte judgment came to the knowledge of the Petitioner/judgment debtor in 2018, after having

received a notice of execution, Petitioner filed Notice of Motion No.3174 of 2018 under Order IX Rule 13 of the Civil Procedure Code for setting aside the ex-parte decree.

2] Another Notice of Motion No.3360 of 2018 was filed by the Petitioner for condonation of delay in preferring Notice of Motion under order IX Rule 13 for setting aside the ex-parte decree being Notice of Motion No.3174 of 2018.

3] Said prayer was objected by the Respondent/decreed holder.

4] In the execution of the decree, at the behest of the Respondent/decreed holder, Application No.146 of 2018 was preferred.

5] Vide impugned order dated 5th October, 2020, Notice of Motion No.3360 of 2018 for condonation of delay in filing Notice of Motion under Order IX Rule 13 for setting aside the ex-parte decree, came to be rejected. As such, this Petition.

6] Contentions of the learned Counsel for the Petitioner are, the Petitioner/judgment debtor has a good case on merit in the matter of setting aside the ex-parte decree under Order IX Rule 13 of the Civil Procedure Code. However, vide impugned order, the learned City Civil Court has refused to condone the delay on the ground that while conducting the suit proceedings, Petitioner had very casual approach and as such recorded a finding that there is no sufficient ground to set aside the decree by condoning delay.

7] In response to Court's query, Counsel for the Petitioner, on instructions, submits that entire decretal amount will be deposited before the executing court within a period of ten weeks from today. Since the statement is made on instructions, same is accepted as an undertaking to this Court.

8] In the wake of above, Counsel for Respondent/decreed holder extends no objection for condonation of delay caused in preferring the Notice of Motion No.3174 of 2018 under Order IX Rule 13 of the Civil Procedure Code.

9] In view of the Undertaking given by the Petitioner to deposit the entire decretal amount and the no objection extended by Counsel for the Respondent for condonation of delay, the impugned order dated 5th October, 2020 is hereby set aside.

10] Notice of Motion No.3360 of 2018 preferred by the Petitioner for condonation of delay stands allowed, subject to fulfillment of aforesaid condition of deposit of the entire decretal amount. If the entire decretal amount, as undertaken, is not deposited within the time stipulated, the order impugned shall sustain and Petition be treated as dismissed. In case the amount as undertaken is deposited, Notice of Motion No.3360 of 2018 be considered to be dismissed.

11] As far as Notice of Motion No.3174 of 2018 is concerned, i.e. the one preferred under Order IX Rule 13 of the Civil Procedure Code, is directed to be decided by the learned City Civil Court on its own merits without being influenced by the present order of condoning delay.

12] Let the aforesaid Notice of Motion preferred under Order IX Rule 13 be decided expeditiously.

13] Petition stands partly allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)