

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.7188 of 2018

Nitin S/O Manoharrao Geed

Vs

Smt. Vasanti W/O Laxmiknat Kathote And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.A. Bhide, Advocate for the Petitioner/s

CORAM : ANIL S. KILOR, J.

DATED : 17.07.2023

1. Heard.
2. In the present matter, the learned Civil Judge Junior Division, Arjuni-Morgaon in Regular Civil Suit No.15/2012, rejected the application Exh. 107 filed under Order 9 Rule 7 of the Code of Civil Procedure (CPC) for setting aside the ex parte order dated 15.04.2015.
3. The application was rejected on the ground that it was moved after about three years and not within 30 days as per the Article 123 of the Limitation Act, 1963 (for short "the Limitation Act").
4. After going through the Article 123 of the Limitation act, which relates to a decree passed ex parte or to rehear an appeal decreed or heard *ex parte*, it is evident that it does not applicable to the application under Order 9 Rule 7 of the CPC.

5. The *Madrash High Court in the case of Pilla Reddy And Ors. Vs. Thimmaraya Reddy and Ors.*, reported in (1997) 1 MLJ 37, has held that, for the application under Order 9 Rule 7 of the CPC, no period is prescribed and It is further held that it is open to the Court to condone the absence of the applicant and set aside the *ex parte* order, permitting the applicant to take part in the proceeding at any stage of the proceeding. It is held that, the only requirement is to assign good cause for his non-appearance on the previous date of hearing.

6. In the present matter, it is the case of the petitioner that the suit was dismissed against the petitioner and after restoration of the same, no summons were served upon the petitioner and on getting the knowledge about the pendency of the suit, he immediately approached to the trial Court by filing the application Exh.107.

7. Having considered the reasons recorded by the trial court while rejecting the application, I have no hesitation to hold that in the present case, the learned trial Court has wrongly applied the Article 123 of the Limitation Act and has not considered, whether the petitioner has assigned good cause for his non-appearance on earlier occasion.

8. In the circumstances, I am of the opinion that the impugned order needs to be quashed and set aside and the application Exh.107 shall be remanded back to the learned trial Court to decide the same afresh, after considering, whether a good cause was shown by the petitioner for his non-appearance, as per the

requirement under Order 9 and Rule 7 of the CPC. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The order below Exh.107 dated 08.08.2018 passed by Civil Judge Junior Division, Arjuni/Morgaon in Regular Civil Suit No.15 of 2012, is hereby quashed and set aside and the matter is remanded back to the trial Court to decide the application Exh.107 afresh.

[ANIL S. KILOR, J.]