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**(2009) 07 BOM CK 0256**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 247 of 2009**

M/s. Allied Sales Agency

APPELLANT

Vs

CG-PPI Ahesive Products Limited

RESPONDENT

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**Date of Decision :** 22-07-2009

**Acts Referred:**

**Citation :** (2009) 07 BOM CK 0256

**Hon'ble Judges :** A.H. Joshi, J

**Bench :** Single Bench

**Advocate :** Arun Bras De Sa, for the Appellant; V. Menezes, for the Respondent

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## Judgement

A.H. Joshi, J.—Rule is made returnable forthwith. Learned advocate Shri V. Menezes, waives service for the respondents.

2. Heard Advocates appearing on both sides.

3. Petitioner's application for condo nation of delay filed by it in the application for setting aside the ex parte decree is rejected.

4. The crux of the matter is whether the suit summons was duly served.

5. It is not in dispute that in the entire correspondence between parties, during currency of transaction, between the plaintiff and defendants, was sent by the plaintiff to defendant on defendant's address namely:

M/s. Allied Sales Agency which is a duly registered firm having its permanent office at K-26, II Floor, Vasant Kunj Main Road, Mahipalpur, New Delhi - 110 037.

6. In the suit filed by the plaintiff however it has given the address of the defendant as follows:

M/s. ALLIED SALAES AGENCY Represented herein by its Proprietor Shri Rajeev Murarka, C-8/8494,Vasant Kunj, New Delhi - 110 070

7. It is evident that the defendant was sought to be served on the location which

is not the ordinary address of the defendant, and it is conclusive that the defendant was not duly served in the suit.

8. This Court is therefore satisfied that petitioner has made out the case for condonation of delay.

9. Since the ground contained in the application for condonation of delay and those contained in application for setting aside the decree, are one and the same, it would be an empty formality to put the trial Court to resort to the exercise of separately deciding the application for setting aside the ex parte decree.

10. In the midst of hearing, on 21.7.2007, this court had called upon the advocate for the petitioner to take instructions and to make a statement as to whether the plaintiff would deposit half of the suit amount as a condition precedent for condonation of delay and setting aside ex-parte order, and on this learned advocate Mr. Arun Braz de Sa had taken time for taking instruction.

11. Today the learned advocate for the petitioner makes a statement before the court that he has instructions and based thereon he states that the appellant/defendant is ready and shall deposit in the trial court within six weeks from today half of the suit amount i.e. 5,34,,152/-.

12. This Court is satisfied with the concession given by the defendant petitioner. This court therefore allows the petition by making Rule partly absolute in following terms:

(a) Civil Misc. Application No.5/2008/A of the Court of Civil Judge Sr. Division at Ponda, is allowed. Delay of 32 days caused in filing the application for setting aside ex parte decree is condoned.

(b) Application for setting aside ex parte decree in Special Civil Suit No.22/2006/A filed on 7th March 2008, in the Court of Civil Judge Sr. Division at Ponda is allowed.

(c) Decree passed in Special Civil Suit No.22/2006/A passed on 22.6.2007 is set aside and Special Civil Suit No.22/2006/A, is restored and shall revive on the file of Civil Judge Senior Division at Ponda.

(d) Parties are directed to appear before the Trial Court on 24.8.2009. The defendant shall furnish his registered address and furnish his written statement within 30 days thereafter.

(e) The Order (a) to (c) above shall continue to operate if petitioner deposit in trial court, half of suit amounting i.e. a sum of Rs.5,34,125/- on or before 7th August 2009.

(f) The amount referred to above when deposited in the Nationalized Bank to fixed deposit for 3 years and it shall be renewed from time to time by the bank unless contrary directions are received from the trial Court.

(g) The order of restoration and order of condonation of delay passed in para No (a) and (b) shall stand automatically recalled and shall get revoked and this petition shall be treated as dismissed in the event the deposit is not made before the date fixed deposit and decree passed in Special Civil Suit No.22/2006/A shall revive and shall operate.

(h) In the circumstances, parties are directed to bear their own costs.