

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

**CIVIL APPLICATION NO. 52 OF 2015
IN
ARBITRATION APPEAL (ST.) NO. 30899 OF 2014**

Union of India ... Applicant/Appellant.
V/s.
Sugasa Enterprises & Anr. ... Respondent.

Ms. Sarita Shah with Ms. J. N. Pandhi for the Applicant.
Mr. Ramdas Shelke for the respondent No.1.

**CORAM : K. K. TATED, J.
DATED : 22/12/2015.**

PC.:

. Heard learned Counsel for the Applicant. Mr. Shelke for Respondent No.1. Respondent No.2 is formal party.

2 This application is for restoration of Arbitration Appeal (ST.) No. 30899 of 2014 which was dismissed in view of conditional order dated 23.03.2015 passed by the learned Registrar (Judicial-II) for non removal of office objections within stipulated time and for condonation of 228 days delay in filing the present Civil Application.

3 The learned Counsel for the Applicant submits that inadvertently the Advocate's clerk failed to inform the Advocate as well as the Applicant about the conditional order dated 23.03.2015 passed by the learned Registrar (Judicial-II). She submits that when the Applicant received notice dated 02.12.2015 from the Respondent, that time they learnt that the Appeal filed by them stands dismissed for non removal

of office objections. Hence, they immediately preferred Civil Application on 02.12.2015. She submits that because of mistake on the part of the Advocate, litigant should not suffer. She submits that they have good chance of success in the present matter. She submits that in the interest of justice, this Hon'ble Court be pleased to set aside the conditional order dated 23.03.2015 and restore the Appeal on file for hearing on its own merits.

4 The learned Counsel for the Applicant submits that Applicant is ready and undertake to remove all office objections on or before 15.01.2016.

5 On the other hand, the learned Counsel for the Respondent No.1 vehemently opposed the present Civil Application. He submits that Applicant has not shown sufficient cause for condonation of 228 days delay in filing present Civil Application. He submits that before the Registrar, matter appeared on 05.01.2015, at that time the learned Registrar granted three weeks' time to remove all office objections. On that date, no one appeared on behalf of applicant. Thereafter, again the matter appeared before the Registrar on 28.01.2015. On that date also, no one appeared on behalf of applicant. That time the learned Registrar has granted three weeks' time to remove office objections. He submits that the matter appeared before the Registrar on 23.03.2015. On that date also no one appeared on behalf of applicant. Hence, the learned Registrar granted four weeks' time to remove all office objections, failing which Appeal shall stand dismissed. He further submits that in paragraph 4 of the Civil Application, it is specifically

stated that they have knowledge about the conditional order passed by the learned Registrar. In spite of that they made incorrect statement in paragraph 8. He relies on paragraph 4 of the Civil Application, which reads thus:

“4 The Applicant states that it appears that the clerk of the Advocate of the Applicant immediately in the month of March 2015 had requested Shri. H. N. Gharat representative of the Applicant submitting papers etc. to submit typed copies of all the pages (under objection) of the above Application and in or about the month of June 2015 the said representative of Applicant for submitting papers etc. had handed over the typed copies/translation of the pages of above Appeal which were under office objections. The Applicants remained under genuine impression that the above Appeal will be numbered in regular course and the date of Admission will be informed by the Advocate. The Applicant states that in fact after filing of the Appeal the papers and proceedings of the above Appeal were served upon the Respondents vide Advocate's letter dated 26.11.2014 which was posted by the Department of the Applicant. Annexed here to and marked Ex-2 is a copy of the said letter dated 26.11.2014 along with the postal receipt of the postal Department to establish that the Respondents were served with the copy of the above Arbitration Appeal.”

6 On the basis of these submissions, the learned Counsel for the Respondent No.1 submits that there is no substance in the present Civil Application and same to be dismissed with cost.

7 I heard both the sides at length. It is to be noted that because of mistake on the part of the Advocate the litigant should not suffer. But, at the same time, the applicant has not given true facts in Civil Application. Whatever is stated in paragraph 4 is contrary to the whatever stated in paragraph 8 of the Civil Application.

8 Apart from that, considering the submissions made by learned Counsel for the Applicant and reasons disclosed in Civil Application, I am satisfied that Applicant has made out case for allowing this Civil Application. But at the same time, Applicant to pay cost of Rs.15,000/- to the Respondent No.1 or his Advocate on or before 15.01.2016, failing which civil application shall stand dismissed without referring back to the court .

9 Hence, following order.

- a) Delay in preferring the Civil Application is condoned.
- b) The conditional Order passed by the learned Registrar (Judicial-II) dated 23.03.2015 is set aside.
- c) Applicant to remove all office objections on or before 15.01.2016 failing which civil application shall stand dismissed without referring back to the court .
- d) Applicant either to deposit in the Registry or pay to Respondent No.1 or their Advocate a sum of Rs.15,000/- by way of cost on or before 15.01.2016, failing which civil application shall stand dismissed without referring back to the court .
- e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)