

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 689 OF 2015
IN
ARBITRATION PETITION (L)NO. 1124 OF 2014**

Manoj Javeri Stock Broking Pvt. Ltd. ...Applicant
(Org.Petitioner)

IN THE MATTER BETWEEN

Manoj Javeri Stock Broking Pvt. Ltd. ...Petitioner
Vs
Gopika S. Mehta. ...Respondent

Mr. Abdul Wahab A. H. Mukri i/b. M/s. Purohit & Co. for Petitioner.
Ms. Mona Bhide a/w B. Chakravarthy i/b. Dave & Girish & Co. for
Respondent.

**CORAM : R.D. DHANUKA, J.
DATED: OCTOBER 12, 2015**

P.C. :

1] This matter was on board on 8th October 2015. After hearing the learned counsel appearing for the parties, I dictated the order in open Court and dismissed the Notice of Motion filed by the applicant for condonation of delay. The learned counsel appearing for applicant mentioned the matter at 5:00 pm and submitted that the learned counsel who appeared for the applicant did not point out before this court that on 28th April 2015, the learned Prothonotary and Senior Master, had already granted extension to remove office objections for

the period of 2 weeks from the date of disposal of the Notice of Motion Lodging No. 1269 of 2015.

2] He submits that the Notice of Motion as well as the Arbitration Petition thus could not have been dismissed since the learned Prothonotary and Senior Master had already granted extension of time to remove office objection.

3] The learned counsel for the applicant invited my attention to the Medical Certificate, annexed at Exhibit-“A” to the Affidavit in support of Notice of Motion to show that Mr. Manoj M Javeri was admitted in the hospital on 29th June 2014 and was discharged on 3rd July 2014.

4] A perusal of the Arbitration Petition indicates that the same person had attended the office of this Court on 18th July 2014 for affirmation of the petition. The petition was lodged on 18th July 2014. The matter had appeared before Prothonotary and Senior Master on 31th March 2015, when the Prothonotary and Senior Master passed conditional order under Rule 986 of the High Court (O.S) Rules, directing the applicant to remove all the office objections on or before 28th April 2015, failing which the petition to stand rejected under said Rule.

5] It appears that on 28th April 2015, the applicant through

their advocates applied for further extension of time on the ground that applicant had filed a Notice of Motion for condonation of delay. The applicant did not remove the other objections raised by the office on 22nd July 2014, till the date of seeking such extension by the applicant before the Prothonotary and Senior Master.

6] The learned counsel for the applicant is not able to explain before this Court as to why other office objections were not removed by the applicant for a period of more than 9 months from the date of lodging the Arbitration Petition.

7] In view of the provision under section 36 of the Arbitration and Conciliation Act, 1996, if the petition is lodged within a time described under section 34 (3) of the Arbitration Conciliation Act, 1996, there is automatic stay of the execution of award till such petition is disposed off. If petition is not filed within the time prescribed, there is no automatic stay. The applicant filed the proceedings under Section 34 and did not remove office objections for several months. It is noticed that when the matters are placed on board for directions before the Prothonotary and Senior Master after several months of the petitioner's not removing office objection, and the conditional order is passed for rejection under Rule 986 , the petitioner at that stage apply for further extension of time.

8] In this matter since applicant did not remove office objection for the period of more than nine months, the respondent filed an application for execution of impugned award and took various steps.

9] The applicant in the present proceeding is a private limited company. Even if one of the director was unwell according to the Affidavit in support of the Notice of Motion, the petitioner could have still filed the petition within time. Be the case as it may, the applicant is not able to explain why it took more than 9 months to remove office objections before applying for extension before Prothonotary and Senior Master.

10] Though, this court has repeatedly asked the learned counsel for the applicant whether the applicant would deposit the awarded sum or part of the amount awarded under said award, the learned counsel appearing for applicant states that the applicant is not in a condition to deposit any amount as suggested by this court. In my view, if there is no automatic stay in view of the applicant not filing petition under section 34 within time prescribed, if any execution application is filed by the respondent, Prothonotary and Senior Master has to proceed with such execution application unless stay is granted by this Court.

11] A Perusal of the record clearly indicates that the office

objections were not removed by the applicant for the period of more than 9 months obviously with an intention to delay the execution of the said award. In my view no indulgence thus can be shown to the applicant who has not come to this court with clean hands. In my view, the right is already accrued in favour of the respondent. In view of the applicant not having explained as to why office objection has not been removed for more than nine months and not having sufficiently explained the delay, no case is thus made out for condonation of delay. The Notice of Motion is accordingly dismissed. In view of the dismissal of the Notice of Motion, the Arbitration Petition is also dismissed. No order as to costs. Application of the learned counsel for the applicant for stay of this order is rejected.

(R.D. DHANUKA, J.)