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

NOTICE OF MOTION NO.1123 OF 2013
IN
ARBITRATION PETITION (LODGING) NO.438 OF 2010

Mahanagar Telephone Nigam Ltd. ...Applicant

IN THE MATTER BETWEEN :

Mahanagar Telephone Nigam Ltd. ...Petitioner

V/s.

M/s.Asco Engineering ...Respondent

Mr.Niranjan Shimpi for the Applicant / Petitioner.

Mr.Ramesh Ramamurthy for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 20TH MARCH, 2015.

P.C. :-

1. By this notice of motion, the applicant seeks condonation of delay in filing this notice of motion and seeks restoration of the petition dismissed in view of non-compliance of the conditional order dated 11th January, 2010 passed by the learned Prothonotary & Senior Master. By the said order, the applicant was directed to remove all the office objections and to get the petition numbered on

or before 25th January, 2011, making it clear that in case of failure, the petition to stand rejected under Rule 986.

2. A perusal of the affidavit in support of the notice of motion indicates that two objections raised by the office i.e. payment of court fees and for correction of paragraph number were already removed by the applicant on 7th May, 2010. The office raised further objections on 11th October, 2010 informing the applicant to explain valuation and court fees.

3. A perusal of the affidavit in support of the notice of motion indicates that the advocate's clerk representing the petitioner, did not inform the advocate about the further objections raised by the office and thus the petitioner and its advocate missed the matter. Only after making enquiries the petitioner was informed that the arbitration petition has already been rejected in view of non-compliance of the order passed by the learned Prothonotary & Senior Master. The applicant therefore, filed this notice of motion for condonation of delay and for restoration of the arbitration petition.

4. Mr.Ramamurthy, learned counsel for the respondent opposed this notice of motion on various grounds, including on the ground of unexplained delay of two and half years. He submits that the applicant has already complied with the impugned award partly and thus it is not the fit case for showing indulgence to the applicant.

5. In my view, though the delay in filing the notice of motion is not satisfactorily explained, in the interest of justice and on the condition that the applicant removes all the office objections within two weeks from today, the impugned order passed by the learned Prothonotary & Senior Master is set aside and the petition is restored to file. It is made clear that if the office objections are not removed within two weeks from today, the petition to stand dismissed without further reference to the Court. It is also made it clear that no further extension will be granted to the applicant.

6. The notice of motion is made absolute in the aforesaid terms.

7. There shall be no order as to costs.

8. Place the arbitration petition for admission on 13th April, 2015.

(R.D. DHANUKA, J.)