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

NOTICE OF MOTION NO. 379 OF 2015
IN
INCOME TAX APPEAL NO. 2519 OF 2011

The Commissioner of Income Tax-V, Pune … Applicant

v/s

Vaidya Rashmi Kiran … Respondent

Mr.N.N. Singh for the applicant.

None present for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 31ST JULY, 2015

P.C.:

By this notice of motion, the revenue seeks condonation of delay of 690 days' in taking out the present notice of motion seeking restoration of an appeal which was dismissed on 26 September 2011.

2 We find that the affidavit in support of the notice of motion annexes a copy of the order dated 2 November 2011 of Assistant Prothonotary (Admn.) Appeal Cell, and the affidavit avers that the appeal of the revenue was dismissed for non-clarity in question of law. However, the order which has been annexed is of the Assistant

Prothonotary (Admn.), Appeal Cell, dated 2 November 2011 recording the fact that the appeal stands dismissed on 2 November 2011 for non-removal of office objections as directed by this Court in its order dated 4 October 2011.

3 The appellant revenue has proceeded to file this notice of motion and the affidavit in support states that there has been a delay of 690 days' for redrafting the questions of law due to genuine administrative difficulties of communication gap. We perused the order dated 26 September 2011 which read as under :

> *"P.C. :-*
>
> *1. In the present case, the questions of law framed as also the grounds of appeal are one and the same. Moreover, the first question framed consists of three sentences and thus, it is difficult to ascertain the actual issue sought to be raised by the revenue.*
>
> *2. When the above discrepancy is brought to the notice of the counsel for the revenue, he states that the appeal has been drafted in consultation with Mr. Tejinder Singh, Commissioner of Income Tax-V, Pune.*
>
> *3. Since the counsel is unable to assist the Court and puts the blame on CIT, we have no option but to avail the services of the concerned CIT. Accordingly, CIT-V, Pune is requested to remain present in the Court on Friday, 30th September, 2011 at 11.00 A.M.*
>
> *4. We may place on record that performance of Shri N.N.Singh in the Court is very poor and, therefore, in the interest of the revenue it is advisable that in each and every matter represented by Shri N.N. Singh, some competent officer remains present in Court so as to assist the Court in*

all those matters assigned to Shri N.N. Singh.”

4 The affidavit in support of the notice of motion shows absolute non-application of mind on the issue on which the appeal came to be dismissed. Besides, we are unable to fathom how redrafting a question of law could take 690 days in view of administrative difficulties. We find no explanation has been offered for the non-removal of the office objections and the consequent delay.

5 Thus the notice of motion is dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***