

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

NOTICE OF MOTION NO.250 OF 2014

IN

WRIT PETITION NO.3080 OF 2005

SU-RAJ DIAMONDS AND ITS ASSOCIATION ... Petitioner

Vs.

M/s. Winsome Diamonds and Jewellery Ltd. formerly
known as SU-RAJ DIAMONDS (INDIA) LTD. & Anr. ... Respondents

Mr. Joy Deb Saha for Applicant / Orig. Petitioner.

Mr. T. R. Yadav for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 5TH MARCH, 2015

P.C. :

Heard Mr. Saha, learned Counsel for petitioner and Mr. Yadav, learned Counsel for respondent No.1 at length.

2. By this Motion, the petitioner has prayed for condoning the delay of 1375 days in filing the Motion as also for restoration of the above Writ Petition.

3. Mr. Saha has invited my attention to the affidavit dated 16.07.2014 of Mr. Rajesh Mahadeo Lotlikar made in support of the Motion, and in particular, paragraphs 4 to 7. He submitted that for the reasons set out therein, the delay deserves to be condoned and the Writ Petition is required to be restored to the file of this Court.

4. On the other hand, Mr. Yadav strenuously opposed the Motion on the ground that there is enormous delay of 1375 days and the delay is not properly explained. No sufficient cause is made out for condoning the delay.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 3 of the affidavit, it is set out that Writ petition came up for hearing and disposal on 07.06.2011 and the petitioner's Advocate could not attend the Court on account of his health. The Petition was dismissed in default. In paragraph 4, it is stated that petitioner took out Notice of Motion No.313 of 2011 on 23.06.2011 i.e. within 30 days. The Motion came up for hearing on 07.02.2014. For technical reasons, Motion was allowed to be withdrawn with liberty to file Motion afresh. The petitioner thereafter took out Notice of Motion No.70 of 2014 on 14.02.2014, which came up for hearing on 03.07.2014. That Motion was allowed to be withdrawn with a liberty to file fresh Motion. The petitioner has thereafter taken out this Motion on 16.07.2014 resulting in the delay of 1375 days. In the case of *State of Nagaland Vs. Lipok AO*, (2005) 3 SCC 752, it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression "sufficient cause" should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

6. For the reasons stated in paragraphs 4 to 7, I am satisfied that petitioner has made out sufficient cause for condoning the delay. Hence, Motion is made absolute in terms of prayer clauses (a) and (b) with no order as to costs. Writ Petition No.3080 of 2005 is restored to the file of this Court.

Writ Petition No.3080 of 2005

At the joint request of the learned Counsel appearing for the parties,

Writ Petition is taken on Board. Mr. Saha seeks leave to amend the Petition on the ground that it is of a formal nature.

2. In view thereof, leave to amend is granted. Amendment shall be carried out within 14 days from today and the amended slips shall be made over to the other side.

(R. G. KETKAR, J.)

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