

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1480 OF 2014
IN
ARBITRATION PETITION NO.1060 OF 2010

The Municipal Corporation for Greater Mumbai Applicant
(Ori. Petitioner)

In the matter between

The Municipal Corporation for Greater Mumbai Petitioner

Vs.

S.N. Thakkar Construction Co. Pvt. Ltd. Respondent

Mr. P.G. Lad alongwith Mr. R.Y. Sirsikar, Advocate for the Applicant/original Petitioner.

Mr. D.B. Singh, Advocate for the Respondent.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 8th October, 2015

P.C. :

1 This Notice of Motion is taken out by the Petitioner for restoration of the petition, which was dismissed for default

on 2nd September, 2014. Soon thereafter that on 25th September, 2014, the petitioner filed the present Notice of Motion. In the affidavit-in-support of the Notice of Motion, the petitioner has given three reasons for not remaining present in the court. They are (i) inadvertence, (ii) concerned staff being on leave for Ganpati festival and (iii) the matter was not being noticed by the deponent of the affidavit. All the three reasons stated are devoid of particulars. Mr. Singh, the learned advocate for the respondent points out from the order dtd. 2nd September, 2014 that the date of the petition had been fixed by the court at the instance and convenience of the advocate for the petitioner and despite the fact, the petitioner and advocate were absent. Mr. Lad, the learned advocate for the petitioner candidly admits that undoubtedly there was negligence on the part of the petitioner and it's advocate in attending to the matter and requests that the petitioner be given a chance to have the petition heard on merit.

2 Apart from the fact that the reasons stated in the affidavit-in-support of the Notice of Motion for non-attendance to the matter on the relevant date not being convincing, it is also to be noted that the petitioner had not moved the court for hearing of the Notice of Motion for more than a year after the same was filed. Mr. Singh, the learned advocate for the respondent submits that during the intervening period, the respondent has filed the proceedings for execution of the award impugned in the

petition. It is only when the notice of the execution proceedings was served upon the petitioner that it has rushed to the court for orders on the Notice of Motion.

3 In my opinion, since the petitioner is a public institution, although the reasons stated in the affidavit-in-support of the Notice of Motion are not convincing, one opportunity can be given to the petitioner for having the petition heard on merits. However, the respondent will have to be compensated with costs. Hence, the Notice of Motion is allowed in terms of prayer clause (a) on condition that the petitioner pays costs quantified at Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondent on/or before 29th October, 2015. If the costs are not paid by that date, the Notice of Motion will stand dismissed, without any further reference to the court. If the costs are paid, office to place the petition on board on 29th October, 2015.

(Smt. R.P. SondurBaldota, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed Order.