

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

NOTICE OF MOTION NO.831 OF 2016
 IN
 APPEAL (L) NO.233 OF 2014

Rabindra Nigam	...	...Applicant
In the matter of:		
Rabindra Nigam		...Appellant
v/s.		
Banoo Nusserwanji Cama		...Respondent

...

Mr.Chirag Mody i/b DSK Lega for the Applicant.
 Mr.Chaitanya Chavan a/w Mr.Yohan Ruben i/b Vigil Juris for the Respondent.

...
CORAM : A.S.OKA &
A.A. SAYED, JJ.
DATED : 26 JULY 2016

P.C.:

Heard the learned Counsel appearing for the Applicant (Appellant) and the learned Counsel appearing for the Respondent.

2. The Appeal preferred by the Applicant-Appellant has been dismissed by the Prothonotary & Senior Master in exercise of powers under Rule 986 of the Bombay High Court (O.S.) Rules. Our attention is invited to the order dated 31 July 2014, by which a conditional order was passed by the Prothonotary & Senior Master directing that if the office objections are not removed on or before 28 August 2014, the Appeal shall stand rejected under Rule 986. In the Affidavit-in-support of the Notice of Motion, it is

pointed out that in fact on 16 November 2015, the Appeal was listed before a Division Bench of this Court. We find that the said fact is borne out from the Farad sheet of the Appeal, which shows that on 16 November 2015, the Appeal was called out before a Division Bench of this Court in presence of the Counsel for the Applicant as well as the Counsel for the Respondent and was adjourned to 30 November 2015. In paragraph (4) of the Affidavit-in-support, reasons for non-removal of the office objections within the stipulated time have been set out. In paragraph (5), it is stated that as the Appeal was listed before the Court on 16 November 2015, the Applicant was not aware that the conditional order had become operative.

3. Learned Counsel appearing for the Respondent opposed the Notice of Motion by pointing out that even on 9 March 2016, the same Advocate, who appeared for the Applicant on 31 July 2014, represented the Applicant before the Prothonotary & Senior Master.

4. The Appeal preferred by the Applicant has been dismissed for non-removal of office objections by the Advocate for the Applicant. The Applicant cannot be allowed to suffer on account of default of his advocate. Moreover, notwithstanding the conditional order, the Appeal appeared for admission before a Division Bench of this Court on 16 November 2015.

5. Hence, a case is made out for restoration of the Appeal. Considering the delay involved, the Applicant will have to pay costs to the Respondent quantified at Rs.25,000/-.

6. Accordingly, Notice of Motion is made absolute in terms of prayer clauses (a) to (c)(i), subject to the condition that the Applicant removes all office objections in the Appeal within a period of three weeks from today. If the office objections are not removed within the extended period, the conditional order passed by the Prothonotary & Senior Master shall stand. We direct the Applicant to pay costs of Rs.25,000/- to the Respondent within a period of three weeks from today. Payment of costs will be condition precedent.

(A.A. SAYED, J.)

(A.S.OKA, J.)