

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1215 OF 2016
IN
ARBITRATION PETITION NO. 770 OF 2014

Jaideep Construction (I) Pvt. Ltd.

.....Petitioner

V/s.

Bombay Slum Redevelopment
Corporation Ltd.

.....Respondent

* * * * *

Ms. Priyanka Pawar i/by. Lawfin and Associates, Advocate for the petitioner.

Mr. Tushar Bhavsar a/w. Mr. Rutuij Bhatt a/w. Mr. Ankit Rajput i/by. Mr. Manoj Bhatt, Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 5TH OCTOBER, 2016.

P.C. :-

1). This Notice of Motion is taken out by the original petitioner for restoration of the petition which was dismissed for default on 29th October, 2015 after condoning the delay of 95 days. The Notice of Motion taken out on 3rd March, 2016 is supported by the affidavit affirmed on the same day. As the Affidavit was

deficient in details, the petitioner was permitted to file additional affidavit. Accordingly, affidavit dated 20th September, 2016 has been filed. The respondent opposes the Notice of Motion with an argument that, there is no case whatsoever made out for condoning the extensive delay of 95 days.

2). In the first affidavit in support of the Notice of Motion, the petitioner states that after the arbitral award dated 23rd December, 2013 as passed, he had filed the petition in time and obtained final registration number after removal of office objections on 11th June, 2014. Thereafter, notice of the petition was served upon the respondent. The advocate then appearing for the petitioner had been regularly following the case status. However, he was unable to appear on 29th October, 2015 because he was personally indisposed and had accordingly informed the petitioner. The Advocate had further informed the petitioner that, he was not in a position to render services on account of some personal reasons and had asked the petitioner to engage another lawyer to represent him. The petitioner was unable to find another lawyer within a short time and the petition came to be dismissed for default on 29th October, 2015. These averments do not amount an explanation of delay in taking out the Notice of Motion for restoration.

3). The second affidavit filed is equally deficient. In that affidavit the Director of the petitioner repeats that, he was informed by the earlier Advocate that, because he had joined a law firm he

was not in a position to attend to the matter of the petitioner. This intimation was also for the date of 29th October, 2015. But the petitioner did not act upon the intimation. It neither engaged another advocate nor made any other arrangement for appearance. As per the second affidavit, about two months thereafter in the month of December, 2015, the Director contacted the earlier Advocate enquiring about the status of the petition when he was told that, the petition was dismissed. Thus the conduct of the petitioner throughout is of negligence. After the knowledge of dismissal in the month of December, 2015, the petitioner waited for three months to apply for restoration. This delay is also not explained. In the total absence of the explanation for delay, there cannot be it's condonation. Hence, the Notice of Motion is dismissed.

(SMT. R.P. SONDURBALDOTA, J)