IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1459 OF 2016
IN
ARBITRATION PETITION (L) NO.89 OF 2016

M/s Globe Capital Market Ltd. .... Applicant

Vs.

Hrim Finance & Securities Pvt. Ltd. .... Respondent

Ms. Kokila Kalra, Advocate for the applicant.
Mr. Sunil Vyas a/w Pranoy Prateek i/by Mansukhlal Hiralal & Co. for the respondent.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 6th October, 2016

P.C. :

1 This Notice of Motion is taken out for condonation of delay of 129 days in filing the petition under Section 34 of the Arbitration and Conciliation Act. The delay in filing the petition has been explained by the petitioner by stating that the petitioner had earlier approached the Court at Delhi to challenge the arbitral award. It had on 21st May, 2014 filed Arbitration Petition bearing No. 332 of 2014 in the District Court X, Patiala House Court, New Delhi. By the order dtd.17th September, 2015, the District Court at

Patiala returned the petition under Order 7, Rule 10 Code of Civil Procedure with an observation that as per jurisdiction clause of Trading Member-Clearing Member Agreement between the parties, the court at Delhi lacks territorial jurisdiction to try and entertain the petition. The agreement between the parties provides for jurisdiction to the court at Mumbai and hence the petitioner could not have challenged the arbitral award by filing the petition anywhere else. Perusal of para 22 of the arbitration petition filed at Delhi shows that the petitioner had sought to justify the jurisdiction of the Delhi Court contending that the agreement between the parties was executed at New Delhi, all the services relating to clearing the business were provided from New Delhi and that the petitioner has it's registered office at New Delhi. This justification was not accepted and the petition returned in view of the specific clause in the agreement between the parties.

2 The Notice of Motion is vehemently opposed by the respondent contending that the petitioner could not have under any circumstances filed the petition in Delhi court. Therefore, any time taken for the proceedings in the Delhi court ought not to be excluded while calculating the period of limitation. Undoubtedly the petitioner ought to have been more vigilant in prosecuting it's challenge to the arbitral award. But it cannot be said that it had deliberately filed proceedings in the Delhi court for causing any prejudice to the respondent. In the circumstance, in my opinion instead of turning the petitioner away from the threshold, it can be

given an opportunity of hearing on merits by compensating the respondent with costs. The Notice of Motion is therefore allowed subject to the condition that the petitioner shall pay costs quantified at Rs.25,000/- to the respondent within a period of one week from today.

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