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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION(L) NO.1978 OF 2016
IN
NOTICE OF MOTION(L) NO.807 OF 2016
IN
INCOME TAX APPEAL (L)NO.841 OF 2015

The Commissioner of Income Tax
(Exemptions) ..Applicant
In the matter between
The Commissioner of Income Tax
(Exemptions) ..Appellant
Versus
Maharashtra Industrial Development
Corporation. ..Respondent

....
Mr. Ashok Kotangle a/w Ms. Padma Divakar for the Applicant.
Mr. Ruturaj H. Gurjar i/b. Mihir Naniwadekar for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 19th AUGUST, 2016

P.C.:

This notice of motion seeks condonation of 69 days delay in filing this motion and also seeks recall of the orders dated 15th April, 2016 and 22nd April, 2016 passed by this Court. By the order dated 22nd April, 2016, the Notice of Motion No.807 of 2016 was dismissed.

2. On 15th April, 2016 as none appeared on behalf of the Revenue, the motion was adjourned to 22nd April, 2016 to be placed on board under the caption "for dismissal". On 22nd April, 2016 Mr. Kotangle, the learned counsel appeared for the Revenue. At that time we passed the following order:-

> *"We find that the affidavit in support of the notice of motion is casual and absent necessary details. To began with the affidavit, relies upon the impugned order dated 19th November, 2015 of the Prothonotary and Senior Master yet the same is not annexed either to the affidavit or to the motion. Further, the affidavit as declared and filed by Deputy Commissioner of Income Tax, consists of numerous blanks with regard to critical issues for consideration of delay i.e. number of delays and the date on which he became aware that the appeal is dismissed.*
>
> *Paragraph 5 of the affidavit filed in support of the notice of motion, reads as under:-*
>
> > *"There is a …. days delay in filing this Notice of Motion as I was not aware that a conditional order was passed by the Hon'ble Court for removal of office objections and the subsequent dismissal of the above appeal. I say that I first became aware of the dismissal of the above appeal on ……….. and immediately thereafter started the process of filing this Notice of Motion. I pray that such delay in taking out this*

Motion be also condoned."

We have noticed in a large number of cases that the officers of the Revenue file affidavit in support of the notice of motion in a very casual manner. This has been brought to the notice of the counsel appearing for the Revenue but it seems to no avail.

In the above view, as it is clear that the Revenue is not sincere in having the appeal restored, we see no reason to allow the present notice of motion."

3. The affidavit in support of the present notice of motion seeks to recall the order dated 22nd April, 2016 continues to demonstrate the same casualness which resulted in order dated 22nd April, 2016. The present affidavit does not even make an attempt to explain the reason for 69 days delay in taking out this notice of motion. Paragraph 6 of the affidavit states that:

"There is a 69 days delay in filing this notice of motion as I was not aware that conditional order was passed by the Hon'ble Court for removal of office objections and subsequent dismissal of the above appeal. I say that I first became aware of the dismissal of the above appeal on 19.11.2015 and immediately thereafter started process of filing this notice of

motion. I pray that such delay be also condoned."

The order sought to be recalled is dated 22nd April, 2016 and not 19th November, 2015 as stated in the affidavit.

4. Further the affidavit filed in support of the present notice of motion also does not make any attempt to explain the number of days delay in filing the notice of motion (L)no.807 of 2016 which was dismissed on 22nd April, 2016. The dismissal was for lack of particulars that the present affidavit states is that there is a 110 days delay due to oversight and communication gap. Again no particulars of the circumstances.

5. In the above view, we find the present affidavit excels the earlier affidavit in support of notice of motion (L)No.807 of 2016 in carelessness. We find that no reason has been made out either to explain the delay in taking out this motion or justify the recalling of the order dated 22nd April, 2016.

6. In the result, the notice of motion is dismissed.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa