

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

**NOTICE OF MOTION NO.316 OF 2016
IN
CONTEMPT PETITION (LODGING) NO.48 of 2014
IN
WRIT PETITION NO.871 OF 2014**

**Municipal Corporation of Greater Mumbai
Through Bombay Electric Supply & Transport
Undertaking : Applicant**

In the matter between :

**Municipal Corporation of Greater Mumbai
Through Bombay Electric Supply & Transport
Undertaking : Petitioner.**

**versus
Udaykumar Ambonkar and ors. : Respondents.**

**Mr. S K Talsania, Senior Advocate i/by M V Kini & Co. for the Petitioner.
Mrs. Neeta Karnik for the Respondent Nos.1 to 4.**

**CORAM : R. M. SAVANT, J.
DATE : 23rd September 2016**

P.C.

1 The above Notice of Motion has been filed for restoration of the above Contempt Petition by recalling and setting aside the order dated 02/09/2014 passed by the learned Prothonotary and Senior Master of this Court. The Applicant/Petitioner also seeks condonation of delay of 644 days in filing the above Notice of Motion.

2 In so far as the said order dated 02/09/2014 is concerned, it

seems that the Contempt Petition had appeared on the board of the learned Prothonotary and Senior Master of this Court on 02/09/2014 on which day, the Petitioner and its advocate were absent. The learned Prothonotary and Senior Master on 02/09/2014 had passed an order to the following effect :-.

“Petitioner and/or his Advocate are absent.

The Petitioner and / or his Advocate to remove office objections on the Petition and get the same numbered and regd. on or before 16/09/2014, failing the Petition to stand rejected under O.S. Rule 986”

It seems that the matter being listed before the learned Prothonotary and Senior Master of this Court and the order passed therein escaped the attention of the advocates for the Petitioner.

3 However, the Petitioner, labouring under an impression that filing of an application would be inappropriate, had filed Chamber Order (L) No.563 of 2015 in August 2015 in which an order came to be passed on 23/09/2015 to the following effect :-

“Petitioner to move before the regular Court as per extant assignment of judicial work. Remove from Board.”

4 In the affidavit in support of the Chamber Summons, explanation for not remaining present on 02/09/2014 as also the reasons why the

objections were not removed as also the reasons for the delay in filing the instant Notice of Motion are set out. It is stated in the Affidavit in Support dated 21/07/2016 that advocate Ms. Kavita Sachin on 19/07/2016 whilst going through various pending matters, noticed the rejection of the aforesaid Petition and the disposal of the Chamber Order vide order dated 23/09/2015 and she immediately thereafter collected the files and prepared the present Notice of Motion. The delay in filing the Notice of Motion is also attributed to the fact that the concerned advocate had gone on leave on medical ground and thereafter the said advocate had lost the track of the matter and did not take out any proceedings to restore the Petition to file. It is stated that the said delay is not intentional but it is caused on account of inadvertence.

5 Further additional affidavit has been filed on behalf of the Applicant/Petitioner dated 18/08/2016 by one Shri Ajit Latke – the Court Clerk in the office of the advocate for the Petitioner. It is stated in paragraph 2 of the said affidavit that deponent had taken search of the papers and proceedings of the Court on 16/08/2016 when it was found that no objections were raised by the Registry in the aforesaid Contempt Petition. It is further stated in the said affidavit that no Associate of this Court was assigned the aforesaid Contempt Petition, hence there was no objection raised by the Registry of the Court. Hence the fact that there were no objections raised by the Registry of this Court is sought to buttressed by two facts firstly that on taking search of the papers

and proceedings of the Court it was found that there were no objections, and secondly that since no Associate was assigned the said Contempt Petition, hence there was no objection in the Contempt Petition.

6 On behalf of the Respondents two affidavits in reply have been filed one by Shri Ranganath Bhaskar Satavase – the Senior Secretary of the Respondent No.4 dealing with the averments made in the affidavit in support of the above Notice of Motion; and the second affidavit filed by one Shri Faisal Nizam Mahimkar – the Vice President of the Respondent No.4 dealing with the additional affidavit filed on behalf of the Applicant. In so far as the affidavit of Mahimkar is concerned, the fact that there were no objections in the Contempt Petition is sought to be disputed as also the case of the Petitioner that no associate was assigned the Contempt Petition by stating that Mrs. Bangale who is now no more in service was in fact assigned the Contempt Petition.

7 Since the original papers in the Contempt Petition were in this Court, this Court deemed it appropriate to direct the Court Associate to peruse the original papers themselves, rather than go by the averments of the parties. The Court Associate of this Court on such inspection informed this Court that in fact no objections have been endorsed on the said Contempt Petition.

8 The learned counsel appearing on behalf of the Respondent Nos.1

to 4 Mrs. Neeta Karnik was also given an opportunity to peruse the Contempt Petition and she stated that in fact there are no objections, however, she submitted that in view of the order passed by the learned Prothonotary and Senior Master on 02/09/2014, the Petitioner ought to have persuaded the matter with the concerned Associate as regards the objections. As indicated above, on an actual verification of the original papers of the Contempt Petition, it is found that no objections have been endorsed on the said Contempt Petition. If that be so, the order dated 02/09/2014 passed by the Learned Prothonotary and Senior Master directing the removal of the objections within time stipulated in the said order could never have been passed and therefore the Contempt Petition could never have been dismissed for non-removal of office objections.

9 Hence the issue that remains is only as regards the delay in filing the above above Notice of Motion. The delay in filing the instant Notice of Motion is undoubtedly of 644 days. The reasons therefor have been adverted to in the earlier part of this Order. Some negligence and carelessness can be attributed to the advocates of the Petitioner. The Petitioner is an undertaking of the Municipal Corporation of Greater Mumbai established under the Mumbai Municipal Corporation Act, 1888. The question is whether a public body like the BEST is required to made to suffer on account of the conduct of its advocates. The answer has to be obviously in the negative. For the

inconvenience that would be caused to the Respondent Nos.1 to 4, they can obviously be compensated by way of costs. However, having regard to the dictum that a party should be given an opportunity to prosecute the proceedings on merits rather than being non-suited on technicalities. The Applicant i.e. the original Petitioner is required to be extended such opportunity. The above Notice of Motion is accordingly allowed and made absolute in terms of prayer clauses (a) and (b). In the facts and circumstances of the present case, the Applicant/Petitioner to pay costs of Rs.5,000/- to the Respondents represented by the learned counsel Mrs. Neeta Karnik within two weeks from date. List the above Contempt Petition for admission on 14/10/2016, which would undoubtedly be tried on its own merits and in accordance with law. The above Notice of Motion is accordingly disposed of.

[R.M.SAVANT, J]