

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (APPEALS) NO.2055 OF 2016**

**IN
APPEAL NO.538 OF 2016
IN
ARBITRATION PETITION NO.489 OF 2008**

Municipal Corporation of Greater Mumbai

...Applicant

Versus

M/s.Arabian Jacking Enterprises for
Contracting and Trading Company

...Respondent

...

Mr. Kevin Setalwad, Senior Counsel with Mr. R.Y. Sirsikar and Ms
Nikita Trivedi and Mr. Sandeep Patil for the Applicant.

Mr. Zal Andhyarujina with Mr. Hursh Meghani and Ms Vidya Choudhari
i/b. Chamber of Javed Gaya for Respondent.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 29th NOVEMBER, 2016.

P. C. :

The Applicant is the Appellant in the appeal. The appeal preferred by the Applicant was admitted and interim relief has been granted. The appeal was dismissed by the order date 4th July, 2016 in view of the conditional order dated 6th May, 2016 for non removal of office objections. We have perused the order dated 6th May, 2016. By the said order, by way of last chance, time was granted to the Applicant /Appellant to remove all office objections including the objection

regarding payment of deficit court fees.

2. We have perused the memorandum of appeal and the presentation form. On the presentation form, there is an endorsement that balance court fee of Rs.57,650/- was paid by the Applicant on 23rd June, 2011. Therefore, on 6th May, 2016 said objection could not have been raised. The delay in filing appeal has already been condoned.

3. The learned counsel appearing for the Respondent relied upon the decision of the learned Single Judge of the Madhya Pradesh High Court in *Buta Singh Shankar Singh Vs. State of Madhya Pradesh*,¹. The view taken therein is that when a matter stands dismissed in the light of conditional order passed by the Court, the application for restoration should be placed before the same Bench which has passed the order. We completely disagree with the view of the learned Single Judge that such orders can be set aside only in exercise of powers under Order XLVII of the Code of Civil Procedure 1908.

4. In any event, conditional order dated 6th May, 2016 was passed since the office objections were not removed by the Applicant. In the affidavit in support of this notice of motion, there is a specific

¹*AIR 1962 MP 205*

statement in paragraph No.5 that the Court Fee was paid in the year 2011. In the reply filed by the Respondent, the correctness of the said statement is not disputed. Hence, a case is made out for restoration. Accordingly, the notice of motion is made absolute in terms of prayer clause (a). We clarify that interim order passed in the appeal also stands restored.

5. At this stage, the learned counsel appearing for Respondent invited our attention to order dated 25th October, 2016. Obviously, there is an inadvertent error in the said order in as much as Appeal (Lodging) No.384 of 2011 was dismissed and present notice of motion is for restoration.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)