

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

**NOTICE OF MOTION NO.552 OF 2017
IN
ARBITRATION PETITION NO.745 OF 2015**

Jayshri Ginning & Spinning (P) Ltd. .. Applicant/Petitioner
Vs.

M/s.C.A. Galiakotwala & Co.Pvt.Ltd. .. Respondent

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Mr.P.M.Shah a/w Mr.Dishang Shah a/w Ms.M.Savla for the applicant/
petitioner.

Ms.Pooja Patil a/w Mr.Kunal Kanungo, Mr.Rushabh Sheth i/by M/s.M.S.
Bodhanwalla & Co. for respondent.

CORAM : R.D. DHANUKA, J.

DATE : 14th December 2017

P.C.:

. By this notice of motion, the applicant seeks condonation of delay in filing notice of motion and seeks recall of the order dated 29th November 2016 passed by this Court dismissing the arbitration petition on the ground that despite the order dated 25th October 2016, the petitioner has chosen to stay away.

2. Mr.Shah, learned counsel appearing for the applicant invited my attention to certain medical records annexed to the additional affidavit and the correspondence exchanged between the erstwhile advocate of the applicant and the applicant and would submit that due to various medical issues, the Director of the petitioner could not give instructions to the learned advocate which resulted in dismissal of the arbitration petition. He submits that the impugned award was also rendered by the learned arbitrator ex parte and thus an opportunity shall be granted to the applicant to pursue the matter on merit.

3. Ms.Patil, learned counsel appearing for the respondent, on the other hand, invited my attention to the order passed by this Court on 27th April 2015 in Notice of Motion No.73 of 2013 thereby dismissing the notice of motion for condonation of delay after making various observations about the conduct of the applicant. She also invited my attention to the order passed by the Division Bench of this Court on 19th July 2016 in Appeal (L) No.467 of 2015. It is submitted that Division Bench though allowing the appeal filed by the applicant and condoning the delay has not set aside various prima facie findings recorded by this Court in the order dated 27th April 2015. It is submitted by the learned counsel that though this notice of motion was filed by the applicant on 24th January 2017, a copy of the notice of motion along with proceedings was served upon the respondent only in the month of April 2017. She submits that except making allegations against the erstwhile advocate by the applicant in the notice of motion as well as in the additional affidavit, the applicant has not sufficiently explained the causes for delay in filing the notice of motion and for remaining absent before this Court repeatedly. She submits that the respondents has already filed execution application against the petitioner and the same are adjourned from time to time on the ground of the applicant stating before the Executing Court that the Arbitration Petition No.745 of 2015 filed by the applicant is pending before this Court.

4. A perusal of the order passed by this Court on 27th April 2015 in the Notice of Motion No.73 of 2013 indicates that this Court had made various observations about the conduct of the applicant and had held that the applicant has not come to this Court with clean hands and

made false and incorrect statement. The applicant has not shown sufficient cause for condonation of delay even at that stage.

5. A perusal of the order passed by the Division Bench in Appeal (L) No.467 of 2015 indicates that though the order passed by the learned Single Judge of this Court was set aside, various prima facie findings recorded by the learned Single Judge are not reversed by the Division Bench. It is not in dispute that though the notice of motion was filed in the month of January 2017, a copy thereof was served upon the respondent only in the month of April 2017.

6. A perusal of the affidavit in support of the notice of motion as well as the additional affidavit filed by the applicant thereby granting liberty by this Court to the applicant indicates that the applicant has applied for condonation of delay and for setting aside the order of dismissal of the petition mainly blaming the erstwhile advocate by the applicant and the applicant has not been issued notice though various allegations are made against her by the applicant.

7. The applicant is a private limited company. Though the Director of the company was not keeping good health, other authorised person could have attended the proceedings. This Court before passing an order of dismissal of the petition recorded the statement made by the erstwhile advocate for the applicant that she had been told not to appear any more in the matter and that the applicant had indicated that they will be engaging another advocate. No ground of the alleged sickness of the Director the applicant was brought to the notice of this Court. Thereafter the matter appeared before this Court on 29th November 2016

when none appeared for the petitioner and thus the arbitration petition came to be dismissed for default.

8. The applicant has though not sufficiently explained the delay and the reasons for remaining absent before this Court repeatedly, in my view, interest of justice would be met with if the applicant is directed to deposit 50% of the awarded amount in this Court within four weeks from today as a condition precedent for restoration of the petition which was dismissed by this Court vide order dated 29th November 2016. The respondent has already filed execution application and the same is adjourned from time to time in view of pendency of these proceedings though there was no stay of the execution proceedings.

9. I therefore pass the following order :-

- (i) The order dated 29th November 2016 passed by this Court is recalled on the condition that the applicant deposits 50% of the awarded amount with interest till the date of deposit within four weeks from today in the office of the Prothonotary and Senior Master.
- (ii) It is made clear that if the amount is not deposited within the time prescribed, the Notice of Motion No.552 of 2017 to stand dismissed without further reference to the Court.
- (iii) If the amount is deposited within the time prescribed, the order dated 29th November 2016 to stand recalled and the Arbitration Petition No.745 of 2015 to stand restored. In that condition, the petition shall be placed on board for 'Admission' on 22nd January 2018. There shall be no order as to costs.

R.D. DHANUKA, J.