

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

**NOTICE OF MOTION NO.116 OF 2017
IN
APPEAL (LODGING) NO.924 OF 2015**

Santhoshkumar Babulal Agarwal : Applicant.

In the matter between

Santhoshkumar Babulal Agarwal : Appellant

Versus

Prakash Chandra Sharma and ors. : Respondent.

**Mr. Kunal Naik i/by Mr. M J Jamdar for the Applicant/Appellant.
Mrs. Sheeja John i/by M/s. M P Cavla & Co. for the Respondent No.6.**

**CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.**

DATE : 30th November 2017

P.C.

1 The above Notice of Motion has been filed for condonation of delay of 209 days in filing the above Notice of Motion which has been filed for restoration of the above Appeal which has stood dismissed for non-prosecution under Rule 986 of the Original Side Rules on account of the orders passed by the learned Prothonotary and Senior Master of this Court on 04/02/2016 and thereafter on 13/07/2016. The Applicant/Appellant is therefore praying for restoration of the above Appeal after condoning the delay of 209 days in filing the above Notice of Motion.

2 It seems that adequate opportunities were given by the learned

Prothonotary and Senior Master to the Applicant/Appellant for removal of office objections. However, on account of the fact that the said objections were not removed that the conditional order directing the Appeal to be dismissed for non-prosecution became operative.

3 The learned counsel Mrs. Sheeja John appearing for the Respondent No.6, who is the main contesting Respondent, opposes the above Motion on the ground that the conduct of the Applicant/Appellant does not behove any discretion being exercised in favour of the Applicant/Appellant. It was her submission that the above Appeal itself is not maintainable as it challenges the order passed in a Review Application.

4 In our view, since the above Appeal has stood dismissed on account of the conditional order passed by the learned Prothonotary and Senior Master of this Court and though opportunities were earlier given to the Applicant/Appellant to remove the office objections, it would be just and proper to show one final indulgence to the Applicant/Appellant. In so far as the second contention of the learned counsel for the Respondent No.6 as regards the maintainability of the Appeal is concerned, the said contention can be urged by the Respondent No.6 in the event the Appeal is listed for admission.

5 In our view, therefore, the above Notice of Motion is required to be allowed and is accordingly allowed in terms of prayer clauses (a), (b) and (c). The office objections to be removed within two weeks from date if not already removed. If the office objections are not removed within the time stipulated by the instant order, then the above Appeal would once again stand dismissed for non-prosecution without further reference to the Court. If the office objections are removed, the above Appeal to be listed for admission after the ensuing Christmas Vacation in January 2018. The above Notice of Motion is accordingly disposed of.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]