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

**APPEAL NO.685 OF 2016
IN
NOTICE OF MOTION (SUITS) (L)NO.2449 OF 2016
IN
ARBITRATION PETITION (L)NO.2127 OF 2015**

Madhukar Anant Pathak

... Appellant

vs.

M/s. HDB Financial Services Limited
& Ors.

...Respondents

Mr. Deepak M. Gupte for the appellant.

Mr. Devendra V. Nawadkar i/b. Ashish Aggrawal for the respondent
no.1.

**CORAM : A.S.OKA, &
A. K. MENON, JJ.**

DATE : 11th APRIL, 2017

ORAL JUDGMENT (PER A.S.OJA, J.)

1. The order dated 31st January, 2017 records that on 14th February, 2017 the appeal was kept for disposal. Accordingly, we have taken up the appeal for final disposal.
2. The appellant and the respondent no.6 filed a petition under section 34 of the Arbitration and Conciliation Act, 1996. The Notice of Motion No.521 of 2016 was taken out for condonation of delay of 5 days. By the order dated 15th June, 2016, the Notice of Motion was made absolute by the learned Single Judge. The

learned Single Judge directed the petitioners in the Arbitration Petition to remove all office objections within a period of two weeks from the said date, failing which the petition shall stand dismissed for non-prosecution. As the petitioners in the said petition did not remove office objections within the stipulated time, the above order became operative and the Arbitration Petition stood dismissed for non-prosecution. A Notice of Motion is taken out for restoration of the Arbitration Petition. By the impugned order, the learned Single Judge dismissed the Notice of Motion for restoration. The reasons were recorded by the learned Single Judge in paragraph 2 of the impugned order which reads thus:-

“2. The present notice of motion has been lodged on 16th August, 2016 for restoring the petition which came to be dismissed with effect from 29th June, 2016. First of all, the application has been taken out after almost 7 weeks. Moreover, in the affidavit in support no satisfactory explanation has been given as to why the petitioners did not comply with the directions of this Court passed on 15th June, 2016. The petitioners have only stated that the petitioner no.2 was out of Pune in Rajkot in his factory. No explanation has been given as to why he could not come from Rajkot and what were the dates he was away.”

3. The learned counsel appearing for the appellant has invited our

attention to the affidavit in support of the Notice of Motion which was filed by the appellant as well as the respondent no.6. In the affidavit, it is stated that the objections have been removed. It is further submitted that the delay be condoned. He submitted that the petitioners in the Arbitration Petition should not suffer due to technical lapse. The learned counsel for the respondent no.1 vehemently opposed the appeal. He urged that while condoning the delay in filing the Arbitration Petition, time of two weeks was granted to remove the office objections in the Arbitration Petition. He submitted that no reasons have been assigned for the delay in removing the office objections and for the delay in filing the Notice of Motion.

4. We have considered the submissions. The Arbitration Petition filed by the appellant and the respondent no.6 has been dismissed only on the ground of non-removal of office objections. In the affidavit in support filed by the appellant and in particular paragraph 2, he has made a statement that the office objections have been removed.
5. The Arbitration Petition stood dismissed on technical ground of non-removal of office objections. While deciding the Notice of

Motion for restoration, in our view, a liberal and justice oriented approach ought to have been adopted especially when the case made out in the affidavit in support was that all the office objections were removed. The order of restoration could have been passed by imposing costs on the petitioners in the Arbitration Petition.

6. Hence, we propose to set aside the impugned order and make the Notice of Motion absolute subject to appellant and the respondent no.6 paying costs quantified at Rs.25,000/- to the respondent within a period of six weeks.

7. Hence, we pass the following order:-

(i) The impugned order dated 6th September, 2016 is hereby set aside;

(ii) Notice of Motion (L) no. 2449 of 2016 is made absolute in terms of prayer clauses (a) and (b) thereof subject to appellant and the respondent no.6 paying costs quantified at Rs.25,000/- to the first respondent within a period of six weeks from the date on which this judgment is uploaded;

(iii) Payment of costs shall be condition precedent. On the failure of the appellant and the respondent no.6 to pay the amount of

costs within the stipulated time, the Arbitration Petition shall stand dismissed for non-prosecution;

(iv) If the amount of costs is paid within the stipulated time, the Arbitration Petition shall stand restored and shall be placed before the appropriate Court.

(v) The appeal is allowed on above terms.

(A. K. MENON, J.)

(A. S. OKA, J.)