

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

**NOTICE OF MOTION NO.235 OF 2017
IN
APPEAL (L) NO.332 OF 2015
IN
COMPANY PETITION NO.495 OF 2013**

Jaikishan M. Kelwani, Ex-Director of
M/s. Scarlet International Pvt. Ltd.

.... Applicant/
Appellant

versus

M/s. SBI Global Factors Ltd.

... Respondent

.....

- Mr.Jamshed Ansari, Advocate for the Applicant/Appellant.
- Ms.Aparna Wagale i/b. HSA Advocates, for the Respondent.

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

DATE : 09th NOVEMBER, 2017.

P.C. :

1. The above Notice of Motion has been filed for the following reliefs:

(a) That this Hon'ble court be pleased to set aside/recall the order dated 3rd December, 2015

and 4th January, 2016, Passed by the learned Counsel appearing for the Ld. Prothonotary and Senior Master under rule 986 of Bombay High Court (Original Side) Rules, 1984.

(b) That this Hon'ble Court pleased to restore the Appeal (L) No.332 of 2015 and grant such time as may think fit and praetor to remove office objection;

(c) Delay, of 134 days in filing the present application, may be condoned;

2. The sum and substance of the reliefs sought is the restoration of the above Appeal, which has stood dismissed for non-prosecution under Rule 986 on account of conditional order dated 03/12/2015 passed by the learned Prothonotary and Senior Master of this Court. The above Notice of Motion has been filed in the above Appeal, which has been filed challenging the exparte order dated 04/12/2014, directing the winding up of the Company i.e. M/s. Scarlet International Private Limited, of which the Applicant is the Ex-Director. The delay caused in

filing the Notice of Motion is a period of 134 days. The delay is sought to be justified on the ground that the earlier view taken by the Division Bench was that the learned Prothonotary and Senior Master, did not have the power to recall the order dismissing the proceedings under Rule 986 for non-removal of office objections.

3. In so far as the said view is concerned, another Division Bench had taken a contrary view resulting in the matter being referred to the Full Bench for answering the following issue viz.

“Whether the Prothonotary and Senior Master has power to set aside an order of dismissal passed by him under Rule 986 of the Bombay High Court (Original Side) Rules, 1984.”

The said issue has been answered by the Full Bench by holding that the learned Prothonotary and Senior Master has the power to set aside his own order and admit a document or

restore the proceedings as the case may be. Hence in view of the authoritative pronouncement of the Full Bench, there is now no dispute as regards the powers of the learned Prothonotary and Senior Master to recall his own order. It is after the Full bench answered the said issue that the Applicant herein filed the instant Notice of Motion for restoration of the above Appeal by setting aside the conditional order passed by the learned Prothonotary and Senior Master. The aforesaid is the foundation in the Affidavit in Support of the above Notice of Motion for seeking condonation of delay of the said 134 days in filing the Notice of Motion. On behalf of the original Company Petitioner i.e. the Respondent herein, an affidavit-in-reply has been filed and the grounds on which the condonation of delay is sought, have been questioned.

4. Heard the learned counsel for the parties. The learned counsel Mr. Ansari appearing on behalf of the Applicant would reiterate the grounds mentioned in the affidavit in support and the gist of the prayers which have been extracted hereinabove.

Per contra, the learned counsel appearing on behalf of the Respondent would oppose the Notice of Motion by contending that the conduct of the Applicant is such, which disentitles it to any indulgence being shown by this Court in the matter of condonation of delay. The learned counsel would seek to make submissions, which in our view, would impinge upon the merits of the challenge in the Appeal and in the condonation of delay.

5. Having heard the learned counsel for the parties, in our view, case for exercise of discretion has been made out as indicated above. The controversy or the issue as to whether the learned Prothonotary and Senior Master has the power to recall his own order passed under Rule 986, has been put to rest by the reference being answered by Full Bench, which was answered on 23/08/2016. The instant Notice of Motion has been filed thereafter in October 2016. Some time would obviously be required for the Applicants/Appellant to take steps to file the Notice of Motion in this Court. For the delay, if any which has been caused in filing the Notice of Motion, the

equities can be balanced by putting the Applicant to terms. In our view, therefore, the Notice of Motion is required to be allowed. Hence the following directions;

- (1) The order dated 03/12/2015 on account of which, the Appeal has stood dismissed for non-prosecution on account of non-removal of office objections, would stand set aside. Resultantly, the Appeal to stand restored to file.
- (2) The Applicant/Appellant to remove the office objections, if not already removed within two weeks from date.
- (3) In the facts and circumstances of the case, the Applicant/Appellant to pay costs of Rs.10,000/- to be deposited with the National Association of Blind, Worli, within four weeks from date. Receipt to be obtained and filed in the Registry.
- (4) The Notice of Motion to accordingly stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)