

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

**NOTICE OF MOTION NO. 517 OF 2017
IN
APPEAL (L) NO. 272 OF 2015
IN
ARBITRATION PETITION NO. 1009 OF 2011**

M/s. Asco Engineering	}	Applicant
versus		
Mahanagar Telephone Nigam	}	
Limited, Mumbai	}	Respondent

Mr. Ramesh Ramamurthy with Mr.
Saikumar Ramamurthy for the applicant.

None for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
S. V. KOTWAL, JJ.**

DATE :- NOVEMBER 1, 2018

P.C. :-

1. Heard Mr. Ramamurthy appearing in support of this notice of motion. The appeal of the appellant, filed in this court to challenge the order of a learned Single Judge dated 13th February, 2015, has been dismissed for non-compliance with the Bombay High Court (Original Side) Rules, 1980.

2. The Registry of this court is empowered, in terms of the Rules, to insist on the procedural requirements being complied with. Else, the appeal would not be registered. In the event

compliance is not made, the registration can be refused. It is such an order passed under Rule 986 of the Bombay High Court (Original Side) Rules, 1980, operative from 26th November, 2015, which is sought to be recalled. The application to recall it has been filed on 24th February, 2017. There is thus a delay of 458 days in moving this application to seek restoration of dismissed appeal.

3. Our attention has been invited to the affidavit in support of this notice of motion. The deponent says that it is entirely a lapse on the part of the office of the advocate which resulted in this dismissal. Mr. Ramamurthy does not dispute the fact that the matter was not followed up, much less diligently by his office, including his staff and juniors. He has owned up the mistake resulting in dismissal of the appeal. He would submit that for his fault, the clients or litigants should not suffer.

4. In the light of the fact that the advocate has admitted the lapses and the litigants should not suffer, we grant this notice of motion. It is made absolute in terms of prayer clauses (a) and (b). In the event all compliances are made within next three weeks from today by the appellant's advocate/appellant, the Registry shall proceed to number this appeal.

5. The notice of motion is disposed of. It is made clear that our direction to register the appeal does not mean that this court has expressed a firm or final opinion on the point of maintainability of this appeal. That point is kept open.

(S. V. KOTWAL, J.)

(S.C.DHARMADHIKARI, J.)