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

NOTICE OF MOTION NO. 39 OF 2018
IN
INCOME TAX APPEAL (L) NO. 1945 OF 2014

The Commissioner of Income Tax-18
Mumbai .. Applicant

In the matter between
The Commissioner of Income Tax-18
Mumbai .. Applicant

v/s.
Vijayraj Properties .. Respondent

Ms. Padma Divakar for the applicant / orig. appellant
Ms. Neelam Jadhav for the respondent

CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA J.J.

DATED : 16th FEBRUARY, 2018.

P.C.

1. This Notice of Motion has been taken out to condone the delay of 801 days in taking out this motion to set aside the order of the Prothonotoary and Senior Master dated 30th March, 2015. The impugned order of the Prothonotoary and Senior Master dated 30th March, 2015 had granted time to the applicant to remove objections on or before 17th April, 2015, failing which the appeal stands rejected under Rule 986 of the Bombay High Court Original Side Rules.

2. Perused the affidavit in support dated 25th October, 2017 of Mr. Suni Mathews, Asst. Commissioner of Income Tax-21(3), Mumbai in support of the motion. We find that the explanation offered in affidavit in support is that the registered clerk of the advocate was on leave due to "some medical ailment" and thereafter he forgot to inform his master to remove the said office objections. It further states that only after the recovery of registered clerk from his medical ailment, he resumed work and when he recollected the said office objections to be removed in the present appeal, he immediately checked the status of the present appeal and came to know about the appeal was dismissed on 17.04.2015. The affidavit further goes to state that thereafter he informed his master and they tried to contact the concerned officer in the Income Tax Department. However, they could not trace the concerned officer to whom the accompanying appeal was assigned. It would be noted that the affidavit as filed is most casual. The affidavit does not indicate the date when the Assessing Officer learnt about the rejection of the appeal on 30th March, 2015 for non-removal of office objections. It gives no particulars of the dates as to when the applicant's clerk became unwell, nature of his illness and when he resumed his work. There is no effort to explain the delay.

3. In the above view, we see no reason to condone the delay of 801 days in filing the present notice of motion.

4. Hence, the Notice of Motion is dismissed. No order as to costs.

(RIYAZ I. CHAGLA, J.) **(M.S. SANKLECHA, J.)**