

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

NOTICE OF MOTION NO. 731 OF 2018
IN
CUSTOMS APPEAL (LDG.) NO. 53 OF 2009

The Commissioner of Customs (Preventive).	...	Applicant.
In the matter between		
The Commissioner of Customs (Preventive).	...	Appellant.
V/s.		
Advance Technology Devices and others.	...	Respondents.

Mr.Pradeep S. Jetly with Mr.J.B.Mishra for the applicant/appellant.
Mr.Jas Sanghvi i/b. PDS Legal for the respondent No.1.
Mr.Mihir Mekal i/b. ALMT Legal for the respondent No.2.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 22nd April 2019

P.C.:

Heard the learned counsel appearing for the applicant, the learned counsel appearing for the respondent No.1 and the learned counsel appearing for the respondent No.2. The learned counsel appearing for the applicant states that a notice has been served to other respondents. We accept the said statement. The notice of motion is opposed by the learned counsel appearing for the respondent No.1 and the respondent No.2.

2. A customs appeal preferred by the applicant which was at lodging number came up before the Prothonotary and Senior Master on

6th October 2009. A conditional order was made on that date. As the applicant could not remove office objections within the stipulated time, the appeal stood rejected in exercise of powers under Rule 986 of the Bombay High Court (Original Side) Rules, 1980 (for short “the said Rules”).

3. Notice of Motion No.813/2011 was taken out by the applicant which was made absolute in terms of prayer clauses (a) and (b). Prayer (a) was for condonation of delay of 483 days and prayer (b) was for setting aside the order passed by the Prothonotary and Senior Master and for restoration of the appeal. Subsequently, Notice of Motion (Ldg.) No.2392/2017 was filed by the applicant. A conditional order was passed on 21st December 2017 by the Prothonotary and Senior Master which reads thus:

P.C.: The Applicant and/or their Advocate to remove office objections on the Notice of Motion and get the same numbered and registered on or before 11/01/2018, failing Notice of Motion to stand rejected under rule 986 of O.S. Rules.”

It is pointed out that though objections were removed on or before 11th January 2018, the notice of motion was not numbered and registered and, therefore, the conditional order became operative. Thereafter, Notice of Motion No.147/2018 was taken out by the applicant for setting aside the order dated 21st December 2017. The said notice of motion was made absolute by the order dated 24th August 2018 in terms of prayer clause (a)

which condoned the delay of 5 days in removal of office objections in terms of the order dated 21st December 2017. The prayer in this notice of motion is for condonation of delay of 2,386 days and for restoration of the appeal.

4. We have perused the additional affidavit of Shri Vaibhav Kiran Pagare, Joint Commissioner of Customs filed by the applicant in which he has explained why there was a delay of 2,386 days. Such a long delay is mentioned in the notice of motion as the delay is not calculated from the expiry of the time mentioned in the order dated 24th August 2018 passed in Notice of Motion No.147/2018 but the delay is computed from the date of original rejection. It appears that the appeal stood rejected under Rule 986 of the said Rules on the ground that though all office objections were removed, it was not got numbered.

5. According to us, there is sufficient explanation for delay. Moreover, the objections were removed within the stipulated time. Therefore, a case is made out for restoration of the appeal.

6. Before we part with this order, we must say that on 21st December 2017 an order was passed by the Prothonotary and Senior Master which is in a standard format. It is the duty of the party filing a matter is to see that office objections therein are removed. However, after the office objections are removed, it is the duty of the Registry to get the matter numbered and registered. A party which files the matter has no control over the Registry when it come to assigning final number to the

matter after removal of office objections. A conditional order cannot expect the party to do something which is not within its control. A conditional order can be always passed granting conditional time to remove office objections. However, onus of getting the matter numbered and registered cannot be put to a party. That is the job of the Registry. It will be appropriate if the learned Prothonotary and Senior Master takes a note of these observations.

7. The delay of 2,386 days in filing notice of motion is only a technical delay which deserves to be condoned. Accordingly, notice of motion is made absolute in terms of prayer clauses (a) and (b).

8. We accept the statement made by the learned counsel appearing for the applicant that all office objections in the appeal have been removed. We, therefore, make it clear that appeal shall not be dismissed under Rule 986 only on the ground that the appellant has failed to get the appeal numbered and registered. It is the duty of the Registry to see that the appeal is numbered and registered at the earliest and place it before the Court under the caption of fresh admission.

(M.S.SANKLECHA, J.)

(A.S.OKA, J.)