

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

**NOTICE OF MOTION NO.213 OF 2017
IN
WRIT PETITION (L) NO.756 OF 2015**

Jayesh C. Mirani

.... Applicant

versus

Maharashtra State Road Development
Corporation & Anr.

.... Respondents

.....

- Mr.Prashant Pandey a/w Mr.Pradeep Singh , Advocate for Applicant.
- Mr.Vishal P. Ghosalkar, Advocate for Respondent No.1.
- Mr.Rajiv Mane, AGP for Respondent/State.

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE : 25th FEBRUARY, 2020.**

P.C. :

1. Heard learned Counsel for the parties.
2. By this Notice of Motion, the Applicant - Petitioner is seeking to condonation of 515 days delay in filing the present Notice of Motion for recalling the order dated 13.08.2015 passed by the Learned Prothonotary & Senior Master of this court in Restoration application No.849/2015.

3. It is to be noted that, in the present proceedings, earlier the Writ Petition stood dismissed in view of order dated 13.08.2015 for non removal of the Office objections in time. Thereafter the Applicant filed the Restoration Application No.849/2015 for recalling the said order which was allowed by the Learned Prothonotary & Senior Master, by order dated 13.08.2015, which reads thus :

“Perused the affidavit in support and the averments made therein, which are self explanatory.

“A case is made out for restoration of the petition. In the interest of justice, the Petition is restored to file. However, the Petitioner is directed to remove all Office objections on the petition and get the same numbered and registered on or before 27.08.2015, failing the petition to stand rejected under O.S. Rule 986.

4. The Applicant also filed the Notice of Motion No.214/2017 for the following reliefs:

- a) That the delay of 515 day be filing this application may be condoned in interest of justice.

- b) That this Hon'ble Court may be pleased to extend the time granted vide order dated 13.08.2015 passed by Prothonotary and Senior Master shri D. V. Sawant in R.A.No.849 of 2015, which was filed in Writ Petition (L) No.756 of 2015 and in the alternative this Hon'ble Court be pleased to recall the order dated 13.08.2015 passed by Prothonotary and Senior Master Shri D. V. Sawant in R.A.No.849 of 2015, which was filed in Writ Petition (L) 756 of 2015.

5. Learned Counsel appearing on behalf of Applicant submits that initially the Applicant filed the present Writ Petition as party in person. That time it remained on his part to remove all office objections within time. Therefore matter was dismissed in view of conditional order passed by the learned Prothonotary and Senior Master. He submitted that subsequently he appointed the present Advocate on record to argue the matter. He submitted that in the interest of justice this Hon'ble Court be pleased to condone 515 days delay in filing the Notice of Motion for recalling order dated 13/08/2015 passed by the learned

Prothonotary and Senior Master. He submitted that if delay is not condoned and matter is not restored, valuable rights of the Applicant may affect. In support of his contention, he relies on paragraph Nos.3 and 4 of affidavit dated 23/02/2017, which reads thus;

- “3. I say that since I am involved in the social service being the President of an NGO called All Maharashtra Human Rights Association (Public Welfare Association), I was busy and this present matter could not be given proper attention. I say that apart from this, due to my personal difficulties, I could not remove the office objections within the stipulated period.
4. I say that I have filed this present petition in the public interest and I have no personal interest in the present petition. I say that I have good case on merits and have chance to succeed in the matter. The default caused by me is bonafide and not intentional. If Petition is not restored great harm and prejudice will be caused to the public cause.”

6. On the basis of these submissions, the learned Counsel for Applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing the Notice of Motion for recalling the order dated 13/08/2015 passed by the Prothonotary and Senior Master.
7. On the other hand, learned Counsel Mr.Vishal P Ghosalkar appearing for Respondent No.1 vehemently opposed the present Notice of Motion. He submitted that they have filed affidavit in reply dated 18/02/2020.
8. Learned Counsel for Respondent submits that the present Notice of Motion is required to be dismissed only on the ground of suppression of facts. He submitted that in the present proceedings earlier matter appeared before the learned Prothonotary and Senior Master for removal of office objections. At that time, the learned Prothonotary and Senior Master passed order dated 16/06/2015, which reads thus;

“The Petitioner to remove Office Objections on the Petition and get same numbered and registered on or

before 17-07-2015, failing which the Petition to stand rejected under O.S. Rule 986. Office to issue notice to the Petitioner accordingly.”

9. The learned Counsel for Respondent No.1 submitted that the Applicant failed to remove office objections in time. He submitted that Writ Petition was dismissed for non removal of office objections. He submitted that thereafter the Applicant preferred Restoration Application No.849/2015 for restoration of the Writ Petition. He submitted that in that Restoration Application the learned Prothonotary and Senior Master passed order dated 13/08/2015 and granted time till 27/08/2015 to remove office objections, failing which the Petition to stand rejected under High Court Original Side Rules 986. He submitted that these facts were not disclosed by the Applicant in affidavit in support of the Notice of Motion. Therefore the present Notice of Motion is required to be dismissed with cost for non-disclosure of the important facts in the present matter.
10. Learned Counsel for Respondent No.1 submits that there is no explanation for more than 515 days delay in filing

the present Notice of Motion. He submitted that the reason given by the Applicant in affidavit in support of Notice of Motion that he was involved in the social service being the President of an NGO called All Maharashtra Human Rights Association (Public Welfare Association) and he was busy in that work, cannot be a sufficient ground for condonation of inordinate delay of 515 days in filing the present Notice of Motion. Therefore there is no substance in the present Notice of Motion and same is required to be dismissed with costs.

11. We have heard both the sides at length.
12. Bare reading of affidavit in support of Notice of Motion dated 23/02/2017 shows that the Applicant failed to disclose sufficient cause for condonation of 515 days delay in filing the Application for restoration. Apart from that in the entire affidavit in support of Notice of Motion, the Applicant failed to disclose the earlier order passed by the learned Prothonotary and Senior Master dated 16/06/2015, by which the Writ Petition

was dismissed for non-removal of all office objections within time. On these two grounds, we are of the opinion that the Notice of Motion preferred by the Appellant is required to be dismissed with costs. Hence following order is passed:

- (a) Notice of Motion stands dismissed with costs.
- (b) Applicant to pay cost of Rs.2,500/- to the Respondent No.1 within four weeks from today.

13. At this stage, the learned Counsel Mr.Prashant Pandey for Applicant seeks stay of this order.

14. There is no question of stay of this order because the Writ Petition is already dismissed for non-removal of office objections. Hence oral request made by learned Counsel for Applicant is rejected.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)