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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.3486 OF 2022
IN
REVIEW PETITION (L) NO.10 OF 2018
IN
COMMERCIAL SUIT NO.460 OF 2018

Unity Infraproject Ltd Thru its Liquidator
Mr. Alok Saxena

...Applicant/
Plaintiff

Versus

Municipal Corporation of Greater Mumbai &
Ors.

...Defendants

Mr. Madhur Rai with Mr. Sachin Kanse i/b. PRS Legal for the
Applicant / Plaintiff.

Mr. Saurabh Pakale, with Ms. Pooja Yadav i/b. Sunil Sonawane for
the MCGM.

CORAM : R.I. CHAGLA J

DATE : 24TH AUGUST, 2022

ORDER :

1. Heard learned Counsel for parties.
2. By this Interim Application the Applicant is seeking recall of order dated 26th September, 2019 passed by the Prothonotary and Senior Master of this Court and for restoration of the Review Petition which came to be rejected for non removal of office objections.

Further relief is sought for grant of further time for removal of any further objections in the Review Petition. Rest of the relief regarding extension of interim relief granted in terms of order at Exhibit A to the Interim Application can only be considered once the Review Petition is restored. Further it is noted that by order dated 13th June, 2018 pursuant to an application made by letter dated 22nd May, 2018 from the Plaintiff stating that they are desirous of unconditionally withdrawing the Suit, the Suit and Notice of Motion was disposed of as withdrawn. It is from this this order, the Review Petition has been filed. The merits of the Review Petition is not being gone into by this Court as this Court is only required to consider whether to restore the Review Petition which had been rejected for non removal of office objections.

3. The Applicant has stated that the Registry of this Court had raised office objection on the Review Petition. An order was passed on 26th September, 2019 that the Review Petition stands rejected under the provisions of Original Side Rule 986, if office objections were not removed on 24th October, 2019.

4. The Applicant has stated that the office objections were

not removed within the stipulated time period and the Review Petition was shown as rejected. A Chamber Order No.62 of 2020 was filed on 13th January, 2020 seeking restoration of the Review Petition and grant of time for removal of office objection on the Review Petition. The Chamber Order is shown as pending till date.

5. The Applicant has further stated that due to Covid 19 pandemic the functioning of all offices were adversely affected and the matter could not be pursued. It is only recently i.e. on 22nd March, 2022, IDBI Ltd. received communication from Municipal Corporation of Greater Mumbai inquiring about status of Review Petition and also reminded the bank about remitting the encashment proceeds early. Upon receiving intimation about the MCGM's inquiries through IDBI Ltd., the Applicant took up the matter with the Advocate. The Applicant was then advised that unless the commercial Suit and the Notice of Motion are restored and the Interim relief renewed, the bank may proceed with payment of the amount under the bank guarantee which would cause grave prejudice to the Applicant / Plaintiff – Company.

6. Considering that the Chamber Order had already been

filed for restoration of the captioned Commercial Suit and Notice of Motion, the Applicant / Plaintiff was under the belief that the Chamber Order would be heard and only upon receiving further legal advise, the Applicant learnt that the Chamber Order was not maintainable in view of changes brought about in the Rules and practice notes of this Court. Thus the present Interim Application has been filed.

7. The Interim Application has been opposed by the learned Counsel appearing for the Respondent No.1. It is the contention of the learned Counsel that there has been no explanation as to the delay in removal of office objections as well as the delay in filing the Interim Application which has been filed only on 26th March, 2022, when the conditional order was passed way back on 26th September, 2019 for rejection of Petition, in the event of non removal of office objections under Rule 986 of the High Court Original Side Rules. He has submitted that the captioned Commercial Suit and Notice of Motion had been disposed of as withdrawn by order dated 13th June, 2018 on application made by the Plaintiff itself. He has submitted that there is no merit in the Review Petition.

8. Having considered the rival submissions and in view of averments in the Interim Application, it does appear that the Applicant upon learning of the rejection of the Review Petition for non removal of office objections under Rule 986 of the Original Side Rules, had taken out Chamber Order No.62 of 2020 on 13th January, 2020 for restoration upon legal advise. The Applicant was under the belief that, the Chamber Order which was pending would be heard and decided and it is only upon subsequent legal advise that the Applicant learnt that the Chamber Order filed in Review Petition is not maintainable in view of the changes brought about in Rules and practice notes of this Court. This was subsequent to the Applicant learning of the communication exchanged between MCGM and the IDBI Ltd regarding the status of the Review Petition and also about remitting the encashment proceeds under the bank guarantee. Thus it appears that there has been a satisfactory explanation as to the delay in filing the Interim Application for restoration of the Review Petition by recall / setting aside the order dated 26th September, 2019 passed by the Prothonotary and Senior Master of this Court. Accordingly, relief sought for in the Interim Application requires to be granted. In so far as the merits of the Review Petition, as aforementioned, this Court is not going into the merits. However, it is

noted that the order passed by the NCLT dated 8th April, 2021 was referred to by the learned Advocate appearing for the Applicant. From the said order it is apparent that there was a moratorium in operation from 20th June, 2017. Further the Suit had been withdrawn by the Plaintiff though the Interim Resolution Professional had been appointed for the Plaintiff. Accordingly, the following order is passed:-

(i) The order dated 26th September, 2019 passed by the Prothonotary and Senior Master is recalled and Review Petition (L) No.10 of 2018 is restored to file

(ii) The Applicant is granted extension of time of three weeks from the date of this Order for removal of any office objections raised by the Registry. In the event of failure to remove the office objections, the Review Petition shall stand rejected without further reference to the Court.

(iii) The Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]