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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.906 OF 2024
IN
APPEAL (L) NO.330 OF 2017
IN
ARBITRATION PETITION NO.46 OF 2017**

Surya Construction
(Through its POA Akhilesh J. Singh) ...Applicant
(Original Appellant)

In the matter between

Surya Construction
(Through its POA Akhilesh J. Singh) ...Appellant.
(Original Claimant)

V/s

Steel Authority of India Ltd.
(Through its Assistant General Manager) Respondent.
(Original Opponent)

Mr. Abhijeet Desai i/b Mr. Ajit M. Savagave, Advocates for the
Applicant/Appellant.
Ms. Payal Upadhyay i/b ANP Chambers, Advocates for the Respondent.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE: 29th APRIL, 2024

P.C.:-

1] By this Application, the applicant – original appellant prays that

the order dated 09/11/2017 passed by the Prothonotary & Senior Master rejecting the First Appeal under Rule 986 of the Original Side Rules be re-called. A further prayer is made to condone the delay of five years and two hundred and thirty five days in moving the present Application.

2] We have heard the learned Counsel for the Applicant as well as the learned Counsel for the non-applicant. It is seen that in the present proceedings challenge has been raised to the order passed under Section 34 of the Arbitration and Reconciliation Act, 1996 dated 10/07/2017. The present appeal has been filed under Section 37 of the Act of 1996. There was delay in filing the aforesaid appeal and by the order dated 10/12/2018 delay was condoned. In the meanwhile, an order was passed by the Prothonotary & Senior Master rejecting the proceedings on 16/11/2017 under Rule 986 of the Original Side Rules.

3] In the Application it has been stated that the learned Counsel representing the applicant was under the bonafide belief that office objections had been removed. With onset of Covid-19 further update of the proceedings was not taken. It was only in the second week of

March, 2013 that the dismissal of the proceedings was noticed. The applicant has stated that the dismissal of the proceedings cannot be attributed to him in view of the fact that it was for the Counsel for the Applicant to remove the office objections.

4] The prayer is opposed by the learned Counsel for the non-applicant by submitting that the applicant was not diligent in pursuing the present proceedings. The delay in seeking restoration of the proceedings was not satisfactorily explained. Hence the Application was liable to be dismissed.

5] We find that the proceedings have been rejected under Rule 986 of the Original Side Rules for failure to remove office objections. It was for the learned Counsel for the Applicant to have taken steps to remove the same. However, considering the reasons stated in paragraphs 4 and 5 of the Application and as there has been no adjudication on merits, we are inclined to condone the delay in preferring the restoration application on terms. Considering the period of delay, non-applicant deserves to be compensated.

6] For the aforesaid reasons, the delay in seeking restoration of the proceedings is condoned subject to the applicant paying costs of Rs 50,000/- to the non-applicant within a period of four weeks from today. On payment of such costs and filing of receipt on record the proceedings would stand restored by re-calling the order dated 09/11/2017 passed by the Prothonotary & Senior Master. After restoration of the proceedings, office objections shall be removed within four weeks. Failure to pay the costs within the stipulated period or failure to remove office objections within the time indicated would result in restoration of the earlier order dated 09/11/2017.

7] The Interim Application is made absolute in the aforesaid terms.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]