

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMPANY APPLICATION NO. 28 OF 2015****IN****COMPANY APPEAL NO. 30 OF 2008****IN****COMPANY PETITION NO. 4 OF 2007**

Mr.H.R. Kanchan

...Appellant / Applicant

vs.

M/s.OFS Industries (P) Ltd. & Ors.

...Respondents

Mr.Ajit Anekar with Mr.Thomas James i/b. Auris Legal for Appellant.
Mr.Dinyar Madon, Senior Advocate with Ms.Shivani Khanna i/b. FZB &
Associates for Respondent No.2.

CORAM : S.C. GUPTE, J.**27 AUGUST 2015****P.C. :**

The company application seeks recall of a dismissal order passed on 25 October 2012 in Company Appeal No.30 of 2008 and restoration of the company appeal. The application is opposed by Mr.Madon, learned Senior Counsel appearing for the Respondent.

2 The appeal was dismissed on 25 October 2012 since not only on that date, but also on earlier dates, i.e. on 6 July 2012 and 26 September 2012, none had appeared for the Appellant. The explanation of the Appellant for non-appearance on these dates is that there was a connected appeal, namely, Company Appeal No.18 of 2008, challenging the same order, which is impugned in the present appeal. It is submitted that the two appeals were heard together on 18 June 2009 when they were admitted. It is submitted that the present Applicant was under the impression that both the company appeals were being heard together. It is submitted that after a particular juncture, the appeals got separated and due to inadvertence, the office of the Applicant's Advocate mererly noted in its record the companion appeal, namely, Appeal No.18 of 2008, and as a result,

remained absent on a few occasions when Company Appeal No.30 of 2008 came up for hearing before the Court.

3 Mr.Madon took the Court through the listing dates in both the company appeals and submitted that the Applicant was absent at the hearing of either of these appeals. Though that appears to be so, it is equally a matter of fact that for the first few dates, the two appeals were shown together and that they appear to have been separated, for some inexplicable reason, at a particular juncture. Considering this peculiar circumstance, in the interest of justice and after putting the Applicant to costs, the application for restoration deserves to be allowed.

4 Accordingly, the application is allowed in terms of prayer clause (a) and Company Appeal No.30 of 2008 is restored to file, to be heard along with Company Appeal No.18 of 2008. The Applicant shall pay costs of Rs.25,000/- to Respondent No.2. Such costs shall be paid within a period of two weeks from today.

5 Respondent No.2 is permitted to file a reply to Company Appeal No.30 of 2008. Such reply to be filed within a period of two weeks from today. Place the company appeal for hearing on 10 September 2015.

(S.C. Gupte, J.)