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

**REVIEW PETITION NO. 41 OF 2014
IN
SUIT NO. 1463 OF 1979**

M/s. Eastern Engineers & Anr.

...Petitioners

(Orig. Defendant Nos.1 & 3)

Vs.

Central Bank of India

...Respondent

(Orig. Plaintiff)

Ms. Usha M. Rahi for the Petitioners

Mr. J.K. Jadhav for the Respondents

CORAM : MRS. ROSHAN DALVI, J.

DATED : 13TH AUGUST, 2015

P.C. :

1. The petitioner has sought to review a part of the judgment dated 11th May, 2012 which is contained in para 6 of the judgment. Upon the suit being filed, issues came to be framed, oral evidence was recorded, documentary evidence was produced, cross examination of the witnesses of both parties took place and arguments were heard.
2. It appears that the original pleadings were misplaced. An order of Justice Kamdar dated 10th February, 2006 shows a direction to the plaintiff's Advocate to file record and proceedings. Thereafter the suit is stated to have been adjourned for one week and which appeared on board and

which was again adjourned to one week, which part is not shown in the review petition, but stated across the Bar by Counsel on behalf of the Review Petitioner. She further stated that thereafter the issues were framed in the suit and thereafter the oral evidence came to be recorded and the arguments were heard.

3. Upon verification of the original papers it is seen that after 10th February, 2006 the suit came up on board on 17th February, 2006. Draft issues came to be tendered to Court and on 24th February 2006 Justice Kamdar settled those issues and adjourned the suit for evidence. Thereafter on 7th March, 2006 affidavit in lieu of examination-in-chief and affidavit of documents were filed. The plaintiff's witness remained present in Court, the defendant sought adjournment which was granted on payment of costs of Rs.2000/-. Thereafter Commissioner has been appointed and evidence has been recorded. There have been a number of adjournments in the suit until the suit reached hearing and arguments were heard on 3rd April, 2012. The judgment has been passed on 11th May, 2012.
4. Counsel on behalf of the respondent Bank states that at no time did the defendants or their Advocate state that any copies of the plaint or written statement were incorrect or showed any anomaly with the evidence and the documents on

record. The copies of the plaint and the written statement were seen and considered when the arguments were heard and hence the evidence came to be considered and the issues came to be answered upon hearing the arguments of the Advocates of the parties.

5. Counsel on behalf of the defendant states that the statement in para 6 of the judgment that copies of the pleadings are admitted to be correct is incorrect and that the pleadings were not admitted to be correct.
6. Counsel on behalf of the defendant is asked what part of any pleadings was incorrect or different. She states that she cannot show and does not know any such part.
7. The same sentence in para 6, which records the admission of the parties that the pleadings are correct records that they are in fact borne out by oral and documentary evidence produced by the parties.
8. Upon the distance in time that this Review Petition is taken out and thereafter sought to be prosecuted which is now well past 3 years of the judgment being pronounced, it is impossible for this Court to remember whether the statement of the Court which is stated to be incorrect is itself correct or not. However in view of the fact that it is recorded in the

same sentence that the copies of the pleadings are borne out by oral and documentary evidence produced by the parties that fact becomes wholly inconsequential.

9. Consequently in order to leave no doubt the words **“admitted to be correct and in fact”** may be deleted. Order accordingly.
10. Review Petition is disposed off accordingly.

(ROSHAN DALVI, J.)