

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1309 OF 2015
IN
SUIT (L) NO.973 OF 2014

Hawa Valves (India) Private Limited ...Plaintiff
Versus
Hawa Valves Automation and another. ...Defendants

Mr. Thomas James, *i/b Auris Legal for the Plaintiff.*
None, *for Defendant.*

CORAM: G.S. PATEL, J
DATED: 14th July 2016

PC:-

1. Heard Mr. James for the Plaintiff. None for the Defendants.

2. There is Affidavit in Reply dated 24th July 2015. The Notice of Motion is for restoration of the Suit and for setting aside an order rejecting the Plaint under Rule 986 for non-removal of office objections. It also seeks that an order dated 28th April 2015 granting leave to the Plaintiff under Clause 14 of the Letters Patent be restored.

3. The Affidavit in Reply makes allegations that the Plaintiffs have not disclosed previous litigations between the parties.

4. On the other hand in the Affidavit in Support of the Notice of Motion, the Managing Director of the Plaintiff has set out that the office objections remained to be removed through oversight and inadvertence. Appearing on behalf of the Plaintiffs, Mr. James says that he accepts in all fairness that the default was that of the Plaintiffs' attorneys and not the Plaintiffs themselves.

5. A previous order by Kathawalla J of 24th June 2015 shows that, indeed, the matter may be more serious than a mere mistake. The order notes out that despite being rejected on 7th January 2015, the Plaintiff obtained orders on 26th March 2015 and 28th April 2015 (S.C. Gupte, J). It was in these circumstances that Mr. Justice Kathawalla on 24th June 2015 directed the Plaintiffs to file the present Notice of Motion.

6. In view of the order of Mr. Justice Kathawalla and the Affidavit in Reply, it seems to me that any order of restoration must be on terms. It is also equally clear that it is not the Plaintiffs who should be expected to pay costs. Since Mr. James very fairly accepts the responsibility for the lapse, I believe it is only just that it is his firm that should be asked to pay these costs.

7. In view of this, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b) subject to M/s Auris Legal, the Advocates for the Plaintiff, paying to Bombay High Court Law

Library (Original Side) a sum of Rs.10,000/- as costs within two weeks from today. The Registry shall place on record a copy of proof of payment of costs. In default, the Motion will stand dismissed without further reference to Court. Neither the suit nor the Motion will be restored thereafter, and no fresh Notice of Motion for restoration of any proceeding will then be entertained.

(G. S. PATEL, J.)