

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

APPEAL (L) NO. 672 OF 2015

WITH

APPEAL (L) NO. 674 OF 2015

Compania Naviera Clementina S.A. & Anr.

...Appellants

Versus

**The State of Maharashtra
Through the Commissioner of
Fisheries & Ors.**

...Respondents

Mr. Prashant Pratap, Senior Counsel, a/w Mr. Manoj Khatri, for the Appellants.

Mr. Darius Khambata, Senior Counsel, a/w Mr. Aditya Krishnamurthy, Mr. Abraham Varghese, Ms. Parvathy Kattol, i/b Bose & Mitra & Co., for Respondents.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 20th June 2016

ORAL JUDGMENT (Per A.S. OKA, J.) :

1. In both Appeals, there are Notice of Motions taken out for condonation of delay. Our attention is invited to the order dated 17th November 2015. The said order dated 17th November 2015

which is common order passed in both the Appeals reads thus :-

“1. *Heard.*

2. *List on 3rd December, 2015 for final disposal at the stage of admission. Both parties are at liberty to file compilation of documents.*

3. *Interim order to continue.”*

2. After 17th November 2015, the Respondents have not filed any proceedings for challenging the said order. The said order directs that the Appeals will be disposed of finally at the stage of admission. But a formal order of condonation of delay in preferring Appeal was not passed.

3. Both the Appeals take exception to the same order dated 24th March 2015 passed by the learned Single Judge on Notice of Motion No. 67 of 2014 in Suit No. 84 of 2013. While dismissing the Notice of Motion taken out by the second Defendants, in paragraph 46 the learned Single Judge issued following directions:-

“It is also stated by the plaintiffs that the corporate registry of Switzerland where defendant no.2 is registered and Panama where defendant nos.4 & 5 are

registered do not disclose any information and the plaintiffs therefore, are unable to obtain information relating to the existence or location of assets of defendant no.2, defendant no.4 and defendant no.5 and other details. The defendant nos.2, 4 and 5 are, therefore, directed to disclose on oath their annual reports, share holding pattern and their assets and interest should they have in any other companies within three months from today.”

4. Appeal (L) No. 674 of 2015 has been preferred by the original fifth Defendant. Appeal (L) No. 672 of 2015 has been preferred by the fourth Defendant.

5. The submission made by the learned Counsel appearing for the Appellants in support of the Appeals is that the learned Single Judge had never put the parties to the notice that he intended to issue a direction against the second, fourth and fifth Defendants directing disclosure on oath of their annual reports, share holding pattern, their assets and the interest which they have been in other companies. He submitted that such a drastic order has been passed by the learned Single Judge while dismissing the Notice of Motion

taken out by the second Defendant. He placed reliance on order dated 4th August 2015 passed by the Division Bench of this Court in Appeal (L) No. 523 of 2015 by which the same direction of disclosure has been set aside as far as the second Defendant is concerned which was the Appellant in Appeal (L) No. 523 of 2015. He submits that the non compliance with the order of disclosure on oath results into serious consequences and therefore, adequate opportunity of being heard ought to have been granted to the Appellants before passing the said drastic order.

6. The learned Senior Counsel appearing for the original Plaintiff pointed out that in the Affidavit in Support of Notice of Motion for condonation of delay, both the Appellants have made false statements that they were not aware of the direction of disclosure on oath issued by the learned Single Judge. He submitted that at the time of hearing of the Notice of Motion taken out by the second Defendant, the Appellants were represented by their Counsel. He submitted that as far as Appeal (L) No. 523 of 2015 filed by the original second Defendant is concerned, the case of the second Defendant stands on a different footing on facts. Lastly he submitted that the learned Single Judge has given reasons for issuing the said

direction.

7. We have given careful consideration to the submissions. As far as the issue of knowledge of the impugned order and condonation of delay is concerned, at this stage, we cannot go into the said question. After hearing the learned Counsel appearing for the original Plaintiff, by order dated 17th November 2015, earlier Division Bench directed that the Appeals shall be disposed of finally at the stage of admission. The original Plaintiff never objected to the said order. As observed earlier, the earlier Bench did not pass a formal order of condonation of delay.

8. The impugned order dated 24th March 2015 has been passed by the learned Single Judge on the Notice of Motion taken out by the second Defendant praying for rejection of the Plaint and for vacating exparte order of arrest dated 9th August 2013.

9. It is not in dispute that there was no specific prayer made by any of the parties before the learned Single Judge for passing an order of disclosure. There is nothing placed on record to show that the learned Single Judge had put the present Appellants to notice that he was proposing to pass an order of disclosure on oath.

10. We are therefore of the view that no opportunity was

granted to the present Appellants of being heard before passing a drastic order of disclosure on oath. Non compliance of such orders attracts serious consequences provided under Code of Civil Procedure, 1908.

11. Hence, the Appeal must succeed. However, we make it clear that this order will not be preclude the parties to the Appeal from taking out appropriate application seeking an order of disclosure.

12. Accordingly, we pass the following order:-

- (i) Notices of Motion for condonation of delay are made absolute by condoning the delay;
- (ii) Paragraph 46 of the impugned order dated 24th March 2015 and in particular, the direction contained therein as regards the disclosure on oath is hereby quashed and set aside only on the ground that the present Appellants were not given an opportunity of being heard by the learned Single Judge on the issue of disclosure;
- (iii) We make it clear that this Judgment and

order will not preclude the parties to the Appeal from taking out appropriate Application before the learned Single Judge for issuing a direction for disclosure in terms of paragraph 46 of the impugned order. However, all contentions of the parties on such application, if made, are expressly kept open;

- (iv) The Appeals are allowed in the above terms;
- (v) Pending Notices of Motion for interim relief do not survive and the same are disposed of.

[A.A. SAYED, J.]

[A.S. OKA, J.]