

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1409 OF 2017
IN
WRIT PETITION NO.2022 OF 2016
WITH
CIVIL APPLICATION NO.1410 OF 2017
IN
WRIT PETITION NO.2026 OF 2016
WITH
CIVIL APPLICATION NO.1411 OF 2017
IN
WRIT PETITION NO.2027 OF 2016
WITH
CIVIL APPLICATION NO.1412 OF 2017
IN
WRIT PETITION NO.2558 OF 2016

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr. Viral Shukla with Priti Patel i/b. Ashok Purohit & Co. for the Petitioner.

Mr. Drupad S. Patil, Advocate for Respondent No.2 in all CAs.

Mr. Jaideep Mitra i/b. Sanskar Marathie for Respondent No.10 in CA/1410/17.

Mr. Ajit M Rajgole for Respondent No.9.

Ms. Rashmi Salion with Yohans Rubens i/b. Vigil Juris for Respondent No.3 in all CAs.

CORAM : K. K. TATED, J.

DATE : JULY 12, 2017.

P.C. :

. Heard the learned Counsel for the parties.

2. All these Civil Applications preferred by Applicant-Original Petitioner for recalling the order dated 23rd June, 2017 passed by this Court by which all these Petitions stood dismissed for default.

3. The learned Counsel for the applicant submit that on 23rd June, 2017, the arguing Senior Counsel Mr. Viral Shukla was scheduled to travel to Ahmedabar because of urgency. Hence they made alternate arrangement directing another Advocate to appear and take time. He submits that when the matter was called out, at that time Ms. Rupali Padgulkar, chamber Associate inadvertently could not reach before this Court. He further submits that in the interest of justice, this Hon'ble court be pleased to recall the order dated 23rd June, 2017 passed by this Court by which all these Petitions stood dismissed for default. He submit that if present Civil Applications are not allowed, irreparable loss will be caused to them.

4. The learned Counsel for the applicant further submits that the present Civil Applications are duly affirmed by the authorized officer Mr. Rajiv Nagar. To that effect, they passed resolution dated 09th

June, 2017. He submits that the Petitioner company's name has been changed and it was notified in Government Gazette on 5th March, 2016. He submits that inadvertently he filed the present Petitions as well as Applications in the old name. He submit that in view of Section 23 of the Companies Act, 1956, all litigations filed by the Company remain as it is without affecting their rights. He relies on Sections 23 of the Companies Act, which reads thus:

23. Registration of change of name and effect thereof.

(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the Register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by

its new name.

5. On the basis of these facts, the learned Counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to allow all these Civil Applications by recalling the order dated 23rd June, 2017 passed by this Court.

6. On the other hand, learned Counsel for Respondent No.10 vehemently opposed the present Civil Applications. His first objection was authorization to Mr. Rajiv Nagar who verified the present Civil Applications. His contention is that the the authorization is given by Company i.e M/s. Stolt Rail Logistic Systems Limited, whereas the applications are filed by Infrastructure Logistics Systems Pvt. Ltd. Hence, the Civil Applications itself are not maintainable. It is to be noted that in view of Section 23 of the Companies Act, the objection raised by the Counsel appearing for Respondent No.10 is not sustainable.

7. The learned Counsel for Respondent No.10 press about the explanation given by the applicants for restoration of the present Writ Petitions. He submitted that, in Para 2 of the Civil Applications it has been stated that their Counsel Mr. Shukla has traveled suddenly to Ahmedabad on 23rd June, 2017.

He submits that the photocopy of the railway ticket placed by the applicant shows that the same was purchased on 22nd June, 2017. It is to be noted that, it cannot be said that a person can not book a journey ticket to avoid any other circumstance. Therefore, the objection raised by the Counsel for the Respondent No.10 is not sustainable.

8. It is to be noted that because of mistake on the part of Advocate, the litigant should not suffer. In the present case, the litigant appointed Advocate and relied upon them for their rights. Considering these facts, I am of the opinion that the applicant has made out the case for allowing all these Civil Applications. Hence, the following order.

ORDER

(A) The Order dated 23rd June, 2017 passed by this Court in all Writ Petitions by which all the Writ Petitions stood dismissed for default is recalled.

(B) All the Writ Petitions stand restored on file for hearing on its own merits.

(C) All the Civil Applications stand disposed of accordingly.

(K.K.TATED, J.)