

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
REVIEW PETITION NO. 1 OF 2017
IN
COMM ARBITRATION PETITION NO. 225 OF 2017**

Seashell Logistics Pvt Ltd

...Petitioner/
Ori.Respondent

Versus

Surendra Overseas (PANAMA) Inc

...Respondent/
Ori.Petitioner

Mr Yasmin Tavaría, *with M Bangale, i/b Mandakini Bangale, for the
Petitioner in Review Petition No.1/2017 & Respondent in CARBP
No.225/2017.*

Mr Prashant S Pratap, *Senior Advocate, with Damyanti Sen, Hari
Wadhwa, i/b rose & Mitra & Co., for the Respondent in Review
Petition No.1/2017 & for the Petitioner in CARBP No.225/2017.*

CORAM: G.S. PATEL, J

DATED: 27th April 2017

PC:-

1. Ms Tavaría for the Review Petitioner, Seashell Logistics, seeks review of my order dated 30th March 2017. The Review Petitioner was the original Respondent to the Commercial Arbitration Petition No. 225 of 2017 (Commercial Arbitration Petition (L) No. 157 of 2017).

2. The Review Petition is astonishing.

3. One ground for a 'review' is that Seashell Logistics' Affidavit in Reply was not taken on file. That is incorrect. It was. It is on file even now. Even Ms Tavaría agrees this is so. Even if it was not, this is no ground for review.

4. Another ground taken is that there are facts that ought to have been disclosed and these were not placed before the Court. These facts are supposedly ones that the Review Petitioner itself, as the Respondent to the original Arbitration Petition, did not disclose. It is submitted that on 30th March 2017, the date of the order under Review, Seashell Logistics, the Review Petitioner, was unaware of an order that Seashell Logistics itself obtained the day before, 29th March 2017, from the Bangladesh Supreme Court. This is where the application today borders on the utterly bizarre.

5. Ground (h) seems to have been introduced into this Review Petition for reasons that altogether defy comprehension. Seashell Logistics insists that my order of 30th March 2017, in which I noted a statement by its own lawyer that it would furnish a bank guarantee, must be reviewed because that order demanded a bank guarantee of a nationalised bank. I cannot understand how being required to furnish a bank guarantee of a nationalised bank can ever be a ground for review; how noting a statement volunteered can be reviewed like this; or how any party can as of right demand that it be allowed to furnish a guarantee of a scheduled bank, because nationalised banks demand a higher margin and because the party who agreed to give a

bank guarantee does not have an account with a nationalised bank. And all of this is quite apart from the fact that my order of 30th March 2017 does not anywhere mention the words “Nationalised Bank” or “Scheduled Bank”. This is, therefore, an attempt to review that which does not exist.

6. Nothing in this Review Petition is within the frame of Section 114 or Order 47 of the Code of Civil Procedure 1908. Order 47 speaks *inter alia* of the discovery of an important matter of evidence which, after the exercise of due diligence, was not within the knowledge of the Review Petitioner or could not be produced at the time of the order was made. It also speaks of an error or mistake apparent on the face of the record. There is no such patent facial error in the order under review. As to the first part of the Order 47 Rule 1, it is not established that the material that is now canvassed was unknown to Seashell Logistics on the date of the previous order, or could not have reasonably be within its knowledge. The order of the Bangladesh High Court was one that Seashell Logistics itself obtained, and I am unable to understand how any party can tell a court that it did not know of an order it obtained on its own application. Neither Order 47 nor Section 114 speak of the knowledge of the parties’ *advocate*.

7. Grounds (a) to (g) seek to re-agitate the matter on merits. That is not the purpose of the Order 47. Ground (h) is one that only has to be stated to be rejected.

8. The Review Petitioner is in default. The actual amount to be secured by the bank guarantee is now US\$ 704,484.27, computed till 1st May 2017.

9. Mr Pratap for the original Arbitration Petitioner points out by filing further Affidavit that Seashell Logistics itself asked for a provisional statement from the Arbitration Petitioner and this was furnished to it by e-mail on 24th April 2017. The further Affidavit dated 27th April 2017 is taken on file.

10. The Review Petition is dismissed while noting the amount now due. No costs.

(G. S. PATEL, J.)