

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 610 OF 2017
IN
APPEAL NO.63 OF 2014**

Glory Films Limited	..Applicant
In the matter of	
Glory Films Limited	..Appellant
Vs.	
Total Petrochemicals France	..Respondents

**WITH
NOTICE OF MOTION NO. 612 OF 2017
IN
APPEAL NO.61 OF 2014**

Glory Films Limited	..Applicant
In the matter of	
Glory Films Limited	..Appellant
Vs.	
Total Petrochemicals France	..Respondents

**WITH
NOTICE OF MOTION NO. 613 OF 2017
IN
APPEAL NO.62 OF 2014**

Glory Films Limited	..Applicant
In the matter of	
Glory Films Limited	..Appellant
Vs.	
Total Petrochemicals France	..Respondents

Mr. C. R. Shah a/w Mr. Jayesh Nishar i/b J Nishar & Co. for the Applicant / Appellant
Mr. D. R. Mehta i/b M/s Dhruve Liladhar & Co. for the Respondents

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 11th OCTOBER, 2017**

P.C.

1 The above Notices of Motion have been filed for restoration of the above Appeals which have stood dismissed for non prosecution by orders all dated 26-10-2016 passed by a Division Bench of this Court. The said order records that the above Appeals are kept pending since February 2016 and from 14-3-2016 the Appellants are not before this Court or any dates of adjournment and that it is only the Respondents who were represented by their Counsel who were before this Court. The restoration is sought for the reasons mentioned in the Affidavit in Support to the above Notice of Motion. It is required to be noted that in view of the reference pending before the BIFR the above Appeals were adjourned sine die by a Division Bench of this Court on 10-9-2014. Hence the Appeals ought not to have been listed unless an application was made by either of the parties for listing of the Appeals. However it seems that the aforesaid fact was not brought to the notice of the Division Bench.

2 In so far as the reference before the BIFR is concerned, it is required to be noted that on the date when the Appeals were dismissed on 26-10-2016, the reference was very much pending before the BIFR. It is only thereafter on 1-12-2016 that vide amendment to clause (b) of Section 4 of the SICA that the effect of abatement of the proceedings was given. Hence on the said day i.e. on 26-10-2016 the impediment to proceed with the Appeals was in existence on account of the matter pending before the BIFR for which reasons the Appeals were adjourned sine die.

3 The Learned Counsel appearing for the Respondents opposes the applications principally on the ground that on number of occasions that the Appeals were listed in the year 2016, the Appellants were unrepresented and therefore their conduct is such that indulgence could not be shown to them.

4 In our view, having regard to the facts which have been stated in the earlier part of this order, the case for exercise of discretion in favour of the Applicants / Appellants is made out. In our view, since the Appeals were adjourned sine die, they could not have been listed before the Division Bench on 26-10-2016, as also considering the fact that there was an impediment to proceed with the Appeals in view of the pending reference before the BIFR.

5 In that view of the matter, the Notices of Motion are allowed and made absolute in terms of prayer clauses (a) and (b). In the facts and circumstances of the case we deem it appropriate to impose costs of Rs.10,000/- on the Appellants in total to be deposited with the Maharashtra State Legal Aid Fund within 4 weeks from date. The receipt to be obtained and filed in the registry. The Appeals to be listed for admission on 27-11-2017.

6 The Notices of Motion are accordingly disposed of.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]