

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 386 OF 2017

M/s.Metco Export International	...	Applicant
V/s.		
M/s.Sandeep Trading Company	...	Respondent

- Mr.G.S. Godbole i/b. Mr.Sanjeev R. Singh for the Applicant.
- Ms.Neha Mehta i/b. Neha Mehta & Co. for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Applicant and learned counsel for the Respondent.

2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) the Applicant is challenging the order dated 3rd March 2017 passed by the City Civil Court, Mumbai in Notice of Motion No. 4471 of 2016 in Suit No. 4249 of 2009.

3] The said Notice of Motion was taken out by the Respondent, who is the Original Defendant, before the trial Court,

under Order-9 Rule-13 of the Code of Civil Procedure (*for short*, “*C.P.C.*”) for setting aside the judgment and order dated 16th March 2015 passed in Suit No. 4249 of 2009.

4] The trial Court has, after considering the submissions advanced at bar by learned counsel for both the parties, has allowed the said Notice of Motion, mainly on the ground that, after the order came to be passed by the Prothonotary in this Court of, “no written statement filed and suit to be proceed as undefended”, the suit came to be transferred to the Court of City Civil Court on 1st October 2012 and the Notice or intimation of the same was not served on the Respondent-Defendant. It is not disputed that, such intimation or notice was not served on the Respondent-Defendant. It may be true that the Applicant-Plaintiff was not required to serve such intimation but it was for the trial Court to serve such intimation, if the party has not appeared before it, after the matter was transferred to the said Court. In my considered opinion, this sole ground itself becomes sufficient to set-aside the *ex-parte* decree.

5] The trial Court has accordingly restored the suit to its original file, subject to payment of costs of Rs.25,000/-.

6] Learned counsel for the Applicant is aggrieved against the

said order, mainly on the count that the Respondent has not come before the Court with clean and clear facts. His conduct is not bonafide. It is submitted that all along the Respondent is residing at Kolkata. Even, in this Court, in the Writ Petition No.4072 of 2016, he has given his address of Kolkata. Not only that, the letter dated 30th June 2015 issued by the Applicant to the Respondent was also served on the address at Kolkata. Though, it is the contention of the Respondent that he has shifted to Bhubneshwar, the Income-Tax Returns of the Assessment Year 2016-2017 also shows that till today the said M/s.Sandeep Trading Company is running the business at Kolkata. Therefore, it is urged that, totally a false and fabricated ground is made out to set-aside the *ex-parte* order.

7] The submission is also raised that when the Respondent was very much represented through his Advocate, he has not even given the name of the Advocate, who has not intimated him about the transfer of the suit or further progress of the suit. Hence, according to learned counsel for the Applicant, the trial Court should not have used its discretion or shown such indulgence.

8] Per contra, learned counsel for the Respondent has pointed out the letter dated 22nd December 2008 received from the

Government of West Bengal, Office of the Assistant Commissioner, Commercial Tax, Kolkata, showing that 'Registration Certificate' of the Respondent's business, M/s.Sandeep Trading Company was cancelled, thereby evidencing the closer of the said business. In view thereof, it is submitted that the letter dated 30th June 2015 which was sent by the Respondent was also not received by the Applicant. It is submitted that, one also cannot even identify the signature of the person who has signed on acknowledgement receipt. It does not bear the stamp of the Company of the Applicant. Thus, it is urged that, the Respondent was never intimated about the progress of the suit and in such situation, it is submitted that the trial Court has rightly restored the suit.

9] In my considered opinion, though for advancing the substantive cause of justice, the trial Court has rightly restored the suit, the costs awarded by the trial Court are meager, having regard to the fact that the suit is of the year 2009, the order of no written statement was passed in the year 2010 and since then the Petitioner has not taken care to enquire about the suit, nor even disclosed the name of his Advocate, who has not intimated him about the progress of the suit, nor he has entered into the witness box to substantiate the said cause. The interest of justice therefore requires that though the

restoration of the suit needs to be allowed considering the transfer of the suit from this Court to City Civil Court, the costs which are awarded by the trial Court of Rs.25,000/- need to be enhanced, considering that execution proceedings are of the amount of Rs.49,00,000/-.

10] Accordingly, Civil Revision Application is allowed to the limited extent of enhancing of costs. The Applicant to pay the costs of Rs.1,00,000/- (inclusive of costs of Rs.25,000/- awarded by the trial Court) to the Respondent within four weeks from the date of this order.

11] Needless to state that, if the costs are not paid within the stipulated period, the order of the trial Court shall stand automatically vacated.

[DR.SHALINI PHANSALKAR-JOSHI, J.]