

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

**REVIEW PETITION NO.3 OF 2018
IN
NOTICE OF MOTION NO.560 OF 2017
IN
ADMIRALTY SUIT NO.12 OF 2011**

M/s.Hypo Alpe-Adria-Bank International AG)....Applicant

IN THE MATTER BETWEEN :

M/s.Hypo Alpe-Adria-Bank International AG)....Petitioner
V/s.

M.V.Glory-I and Ors.)....Respondents

Mr.V.J.Mathew, Senior Advocate a/w Mr.Vipin Varghese i/by Sandhya Pillai for applicant/petitioner.

Mr.Bimal Rajasekhar i/by Ashwin Shanker for respondent no.6.

CORAM : K.R.SHRIRAM,J

DATE : 29.6.2018

P.C.:-

1 One of the main reason why the Notice of Motion for restoration of the suit was dismissed is because there was not even an averment in the affidavit filed and support and/or in the rejoinder that the earlier advocate did not inform the petitioner about the orders passed in the suit. Mr.Mathew for the Review petitioner points out that the affidavit which is at page-37 to this Review Petition being an affidavit of Mr.Vipin P.Varghese, advocate, sworn on 24.6.2017 was part of the rejoinder and it is state that Mr.Varghese was giving

instructions and he has stated that the advocate never informed him. Mr.Mathew submitted that the counsel who had appeared at the time of hearing of the Notice of Motion missed bringing it to the notice of this court and only if the counsel had brought that to the notice of the court, the observations of the court in paragraph-7 of the order dated 10.1.2018 would not have been made resulting in dismissal of the Notice of Motion.

2 I have considered the affidavit of advocate Mr.Vipin P.Varghese. I agree with the counsel for Review Petitioner that there are averments to the effect that the advocate on record did not inform the petitioner about the orders passed.

3 When one reads the Review Petition and the affidavits filed, this court cannot rule out a situation where there has been a miscommunication between the advocates. Litigants rely on advocates to represent them in courts and to get them justice from the court. Due to mistakes of advocates, certainly it would be rather harsh to make a litigant suffer.

4 In the circumstances, I am inclined to re-call my order dated 10.1.2018 and restore the Admiralty Suit No.12 of 2011.

Admiralty Suit No.12 of 2011 is hereby restored.

5 Review Petitioner to pay sum of Rs.50,000/- as costs to the respondents by way of cheque drawn in favour of advocate on record for respondents. This amount to be paid within two weeks from today.

6 As last chance, parties to file their respective affidavit of documents, complete discovery and inspection and exchange statement of admission and denial with reasons for denial on or before 20.7.2018.

7 Affidavit in lieu of examination-in-chief together with compilation of documents and list of witnesses to be filed and copy served by 31.7.2018.

8 Stand over to 3.8.2018 for marking of documents/recording evidence at which time, plaintiffs' first witness shall remain present in court.

CHAMBER SUMMONS NO.807 OF 2016

1 In view of the above order, by consent Chamber summons

No.807 of 2016 is restored to file and taken up for hearing.

2 For reasons mentioned in the affidavit in support, Chamber summons allowed in terms of prayer clause-(a) which reads as under :-

“(a) That the Applicant/Plaintiff be permitted to amend the plaint by adding the current name of Plaintiff i.e., “HETA ASSET RESOLUTION” in place and stead of its old name i.e., “Hypo Alpe-Adria-Bank International AG.”

3 Amendment to be carried out and amended cause title to be served within two weeks from today.

(K.R.SHRIRAM,J)