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

NOTICE OF MOTION NO.434 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO.448 OF 2017

M/s.Covestro (India) Pvt. Ltd.

...Applicant
Ori.Respdt. 1

IN THE MATTER BETWEEN :

M/s.Flexituff Industries

...Petitioner

V/s.

M/s.Covestro (India) Pvt. Ltd. & Ors.

...Respondents

Mr.Abhishek Patil for the Petitioner.

Mr.Vikas Takalkar for the Respondent / Applicant in the Notice of Motion.

CORAM : R.D. DHANUKA, J.
DATE : 12TH APRIL, 2018.

P.C. :-

1. By this notice motion, the applicant seeks recall of the order dated 13th December, 2017 passed by this Court. The applicant does not dispute that the papers and proceedings were served upon the applicant before this Court admitted the arbitration petition and staying the execution of the impugned order dated 29th March, 2017.
2. I have heard the learned counsel for the parties. It is the

case of the applicant that the arbitration petition was dismissed for default on 6th December, 2017. Admittedly an authorized representative of the applicant was present in Court before Shri Justice M.S. Sanklecha. The original defendant did not give any notice to the applicant while mentioning the matter at 3:00 p.m. of the arbitration petition. The applicant was thus under an impression that the matter is already dismissed and would not appear thereafter. In these circumstances, the applicant could not remain present on 13th December, 2017 when the matter was called out.

3. A perusal of the order dated 13th December, 2017 clearly indicates that the applicant was absent when the matter was called out. I am inclined to accept the explanation given by the applicant in the affidavit in support of the notice of motion that no notice was given to the applicant by the original petitioner for making application for restoration of the arbitration petition on 6th December, 2017 at 3:00 p.m. Learned counsel for the original petitioner does not dispute that no notice of mentioning the matter was given to the learned advocate of the applicant herein.

4. I therefore, pass the following order :-

- a). The order dated 13th December, 2017 passed by this Court is recalled.
- b). The notice of motion is made absolute in aforesaid terms.

5. Place the arbitration petition on board for admission on 14th June, 2018.

6. Affidavit in reply shall be filed within two weeks from today and a copy thereof shall be served upon the petitioner's advocate simultaneously. Rejoinder, if any, shall be filed within one week from the date of service of the affidavit in reply and a copy thereof shall be served upon the respondents' advocate simultaneously.

(R.D. DHANUKA, J.)