

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO 96 OF 2018

IN

APPEAL (L) NO. 441 OF 2016

Swarup Group of Industries .. Applicants/Appellants.

vs.

Manohar Manak Alloys Pvt. Ltd. .. Respondents

WITH

NOTICE OF MOTION NO. 236 OF 2018

IN

APPEAL (L) NO. 440 OF 2016

Swarup Group of Industries ... Applicants/Appellants.

V/s.

Movies N' More India Pvt. Ltd. ... Respondents.

Mr. Prasad Kumar Das I/b Das Associates for the Applicants in both the matters.

Mr. Sean Wassoodew for the Respondents in both the matters.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 8th OCTOBER 2018.

P.C.:

1] Heard the learned counsel appearing for the applicants in both the matters.

2] On 28th November 2016, on the appeals preferred by the applicants, a Division Bench of this Court passed the following order:

“1. Undertakings are tendered by the proprietor of the applicant/appellant. The undertaking on oath is accepted. In view of the undertaking, the Registry is directed to accept the appeal for filing.

2. In the event, the applicant/appellant fails to pay entire Court fees within a period of four weeks from today, apart from initiating acting against the applicant under the Contempt of Courts Act, 1971,

the appeal will automatically stand dismissed without further reference to the Court.”

3] Admittedly, the applicants committed breach of the undertakings given to this Court. On 12th January 2017, an order was passed by the learned Prothonotary and Senior Master granting conditional time till 9th February 2017 to remove the office objections and to get the appeals numbered. The conditional order became operative and the appeals stood rejected as per Rule 986 of the Bombay High Court Original Side Rules. Thereafter, chamber orders were taken by the applicants in both the appeals for restoration of the appeals which were dismissed by the order dated 9th February 2018 passed by the learned Prothonotary and Senior Master. Now, the present Notices of Motion have been taken out for restoration of the appeals. We find that even the present Notices of Motion appeared before the Court on 4th June, 18th June, 9th July and 23rd July 2018. On 30th July 2018, a Division Bench of this Court directed the Registry to accept the Court fees from the applicants. When the Notices of Motion were listed on 20th August 2018, this Bench noticed that the Court fees were not paid and therefore a show cause notice was ordered to be served upon the Proprietor of the applicants. The deficit Court fees in the appeals has been paid as late as on 31st August 2018.

4] Today, the identical affidavits have been tendered in both the appeals by the Proprietor of the applicants giving only one reason. The reason is that an arbitration award was made against the applicants and in execution of the award, movable and immovable properties of the applicants were attached. No particulars are given such as date of the

award, order of attachment etc. It is not his case that the attachment was made after 28th November 2016. Thus, there is absolutely no explanation in the identical affidavits tendered in both the appeals for explaining the delay. The court fees ought to have been paid within four weeks from 28th November 2016 which were ultimately paid on 31st August 2018. In fact, this is a case of willful breach of the undertakings given to this Court on 28th November 2016 and therefore, the Court would have been justified in penalising the Proprietor of the applicants for committing breach of the undertakings given to this Court. Now that the Court fees have been paid belatedly, if any leniency is to be shown, the applicants will have to be saddled with heavy costs. Accordingly, we propose to impose costs quantified at Rs.50,000/- each on the applicants in both the Notices of Motion. 50% of the costs amount will be paid to the respondents and 50% will be paid to the State of Maharashtra.

5] Hence, we dispose of Notices of Motion by passing the following order:

(a) The order of the Prothonotary and Senior Master of rejecting the appeals stand set aside subject to the following two conditions:

(i) The applicants shall remove all office objections in the appeals within a period of four weeks from today ;

(ii) The applicants shall pay costs quantified at Rs.25,000/- to the respondents and the costs quantified at Rs.25,000/- to the State of Maharashtra;

(b) The amount of costs shall be paid within a period of one month from the date on which this order is uploaded. Costs payable to the respondents shall be paid by pay order which shall be handed over to the learned advocate for the respondents. Costs of the State of Maharashtra shall be paid by handing over a pay order in the sum of Rs.25,000/- to the Office of the Government Pleader, High Court Original Side;

(c) An affidavit setting out compliance along with copies of the relevant documents showing compliance shall be filed within a period of five weeks from the date on which this order is uploaded;

(d) We make it clear that on failure of the applicants to remove all office objections within four weeks and/or failure of the applicants to pay costs as aforesaid, the order of rejection of the appeals shall stand;

(e) We clarify that the aforesaid amount of costs shall be separately paid in each Notice of Motion. Thus, total costs payable to the respondents is Rs.50,000/- and to the State of Maharashtra is Rs.50,000/-;

(f) Notices of Motion are disposed of on above terms.

(M. S. SONAK, J.)

(A.S.OKA, J.)

Dinesh
Sadanand
Sherla

Digitally signed
by Dinesh
Sadanand Sherla
Date: 2018.10.11
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