

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

**NOTICE OF MOTION NO.560 OF 2017
IN
ADMIRALTY SUIT NO.12 OF 2011**

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

M.V.Glory I and Ors.)....Defendants

Ms.Sandhya Pillai for the applicant/plaintiff.
Mr.Bimal Rajasekhar i/by Ashwin Shanker for defendant no.6.

**CORAM : K.R.SHRIRAM,J
DATE : 10.1.2018**

P.C.:-

1 The courts are generally lenient in granting restoration application when a party makes an application for restoration of their suit that came to be dismissed for want of prosecution or default. This is one such application which, in my view, does not warrant any leniency.

2 On 21.9.2016 this court was pleased to dismiss the suit and the following order was passed :-

*“None for the plaintiff. The suit is, therefore, dismissed.
All interim applications also stand disposed.”*

3 On 10.3.2017 almost six months later, this application has been filed. The reason for not remaining present can be found in

paragraph nos.2, 3 & 4 of the affidavit in support and it will be useful to reproduce the same.

“2. I say that I had entrusted the matter to Adv Stebin Thomas who in turn entrusted the matter to Adv Sagar Kasar who was the advocate on record in the above matter. I say that the matter was listed before this Hon'ble Court on 21st September, 2016 but the same did not come to the attention of the advocate on record or my entrusted lawyer by an oversight and they failed to appear before this Hon'ble Court on 21st September, 2016.

3. Consequently, this Hon'ble Court was pleased to dismiss the captioned Admiralty Suit 12 of 2011 for default as none appeared for the Applicant in the said matter and a copy of the said order dated 21st September, 2016 is annexed hereto and marked as “Exhibit A”.

4. I say and submit that the matter was unattended on 21st September, 2016 as the advocate on record and my instructed lawyer was unaware of the posting of the matter on 21st September, 2016. Subsequently, I came to know of the same through the present counsel and I have now instructed a new counsel to act on my behalf and to protect my interest in the above matter. If the matter is not restored to file, unrepairable loss and damage will occur to the Applicant.”

4 Therefore, the entire basis of this application is that plaintiff was totally unaware of what was happening in the matter because even the advocate was not aware of the posting of the matter on 21.9.2016.

5 Mr.Rajsekhar for 6th defendant strongly opposes the

application and states that the application is based on false statement. With the assistance of Mr.Rajasekhar, I perused the affidavit in reply.

6 When the Chamber summons No.807 of 2016 taken out by the applicant was listed on 7.9.2016, the advocate appearing on behalf of plaintiff informed the court that they have not been receiving instructions from plaintiff and would like to apply for discharge. Advocate also stated that he will inform plaintiff of their intention to apply for discharge. The court directed, in view of the statement made by counsel appearing for plaintiff, that plaintiff to remain present in person or through a duly appointed advocate on the next date, failing which Chamber summons will stand dismissed. It was also noted that plaintiff had not even complied with the directions given on 5.1.2016 and the present advocate on record was to communicate to plaintiff the order passed.

7 In a different matter, defendant no.6 had preferred an appeal being Appeal No.163 of 2014 in which the applicant in this Notice of Motion was respondent no.3. On 8.2.2017 when the appeal was taken up and disposed by a Division Bench of this court, the applicant was represented by an advocate. In the affidavit in support of this Notice of Motion all these facts have been suppressed by the

applicant. Even in the rejoinder filed, there is no averment to state that the earlier advocate on record Shri Sagar Kasar did not inform the applicant about the orders passed in the suit. The applicant has not even attempted to explain as to how he did not even comply with the order that was passed by this court on 5.1.2016. Therefore, the explanation as given in paragraph nos.2, 3 & 4 in affidavit in support cannot be accepted as a genuine explanation.

8 In the circumstances, Notice of Motion is dismissed with no order as to costs.

(K.R.SHRIRAM,J)