

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 30 OF 2018
IN
REVIEW PETITION (L) NO. 26 OF 2017
IN
APPEAL NO. 605 OF 2006
IN
WRIT PETITION NO. 637 OF 2004

M/s. National Textile Corporation
Ltd. and anr.

.....Applicants
(Orig. Applicant/
Petitioners)

IN THE MATTER BETWEEN :

M/s. National Textile Corporation
Ltd. and anr.

....Petitioners
(Orig. Respondents
no.1 and 2)

V/s.

Shri. Dnyanoba Vishnu Sawant
and Ors.

....Respondents
(Orig. Applicants/
Orig. Petitioners)

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Mrs. Meena H. Doshi, Advocate for the applicants,
petitioners.

Mr. S.N. Deshpande a/w. Ms. Nivedita S. Deshpande,

Advocate for the respondents.

CORAM :- **R.M.SAVANT, &**
 SANDEEP K. SHINDE, JJ.
DATE :- **9TH FEBRUARY, 2018.**

P.C. :-

1. The above Notice of Motion has been filed seeking condonation of delay of 140 days in filing the above Review Petition. The reasons therefor, are mentioned in the Affidavit-in-Support of the Notice of Motion and especially in para-3 thereof. The sum and substance of the reasons is that, the applicant became aware of the judgment and order dated 24th January, 2017 (of which review is sought) when the applicants received a letter dated 4th March, 2017 addressed by the Advocate for the respondents which included the said order. It is stated that the said letter was received on 7th March, 2017. It is further stated that the applicant thereafter took search of the papers and proceedings on 11th April, 2017 and also applied for certified copy of the

relevant papers and proceedings which the applicants received on 6th July, 2017. It is further stated that in the interregnum, that is, prior to receiving all the papers and proceedings, the applicants had filed Notice of Motion seeking modification of the said judgment and order dated 24th January, 2017 on 27th April, 2017. However, on account of the opposition to the said Notice of Motion by the respondents on the ground of its maintainability, having regard to the relief sought that the applicants withdrew the said Notice of Motion which was accordingly disposed of as withdrawn on 28th June, 2017.

2. The said reasons mentioned in the Affidavit-in-Support are sought to be questioned on behalf of the respondents by filing the Affidavit-in-Reply of one, Madhukar Subrao Kanerkar. The sum and substance of the reasons mentioned in the Affidavit-in-Support are sought to be dealt with in the said reply.

3. We have heard Learned Counsel for the parties. The Learned Counsel, Mr. Doshi, appearing for the

applicants would reiterate the grounds set out in the Affidavit-in-Support and more particularly in para-3 thereof. It was the submission of the Learned Counsel that the instant Review Petition could be filed by the applicants only after they had received the relevant papers and proceedings on 6th July, 2018. Per-contra, Mr. Deshpande, the Learned Counsel appearing on behalf of the respondents i.e. the workmen, would submit that since the applicants are seeking discretion to be exercised in their favour, their bonafides would have to be seen. It was the submission of Mr. Deshpande, that inspite of the said judgment and order dated 24th January, 2017 the applicants have not deposited the amount adjudicated by the Division Bench of this Court and deposited the same with such interest as per their conception. It was also the submission of the Learned Counsel that, the applicants did not move the instant review petition when atleast one of the Judges of the earlier Division Bench was available. It was, therefore the submission of the Learned Counsel,

Mr. Deshpande that, no discretion would be exercised in favour of the applicants. Having heard the Learned Counsel for the parties, the question that arises is, whether discretion is required to be exercised in favour of the applicants. It is required to be noted that, the judgment and order dated 24th January, 2017 of the Division Bench was rendered in the absence of the applicants. It is not necessary to go into the reason for the absence of the applicants in the said proceedings. The reasons mentioned in para-3 of the Affidavit-in-Support could be said to be the plausible reasons for the delay of 140 days occurring in the filing of the instant Review Petition. In so far as, the first submission of the Learned Counsel for the respondent, Mr. Deshmukh is concerned, the said contention can be considered at the hearing of the Review Petition. In so far as the second submission is concerned, it is required to be noted that the earlier Notice of Motion which was filed by the applicant for modification whereas the instant Motion has been filed for

review. The reasons as to why the said application for modification was not moved and placed before the earlier Bench need not be gone into by this Court. This Court is only required to consider, whether the delay of 140 days in filing the above Review Petition has been adequately explained by the applicants by way of the reasons mentioned in the Affidavit-in-Support. In our view, as indicated above, the reasons mentioned in para-3 of the Affidavit-in-Support can be said to be the plausible reasons for which delay has occasioned. It is also required to be borne in mind that, the applicant is the National Textile Corporation, which is a Government of India Undertaking and therefore some let way would have to be granted to it on account of the time that is usually taken to take arrive at a decision to file proceedings. In that view of the matter, case for exercise of discretion is made out. The Notice of Motion is accordingly made absolute in terms of prayer clause (a). In the facts and circumstances of the case, the applicants to pay costs

quantified at Rs.3,000/- to the respondents represented by Mr. Deshpande, to be handed over to Mr. Deshpande, to be forwarded to the applicants. The Review Petition to be placed for hearing after 2 weeks i.e. on 23rd February, 2018 at 4.00 p.m.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)