

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO. 25 OF 2018
IN
LEAVE PETITION NO. 354 OF 2018**

Atlanta Ltd	...Petitioner
<i>Versus</i>	
Metso (India) Pvt Ltd	...Defendant

**Mr Mukesh Vashi, Senior Advocate, with Aparna Deokar, i/b MP
*Vashi Associates, for the Petitioner.***

**CORAM: G.S. PATEL, J
DATED: 11th December 2018**

PC:-

1. Admit.

2. In the facts and circumstances of the case, there is no question of issuing a notice. The reason is that the Review Petition is directed against a portion of my order dated 1st November 2018. By that order, I not only refused leave under Clause XII of the Letters Patent but also directed return of Plaint under Rule 283 of the Bombay High Court (Original Side) Rules.

3. While the Review Petition does, as expected, challenge everything, Mr Vashi with his usual fairness, restricts his challenge to that portion of the order in paragraph 4 that directed return of Plaintiff under Rule 283. His submission is that on the averments in the Plaintiff and in the Leave Petition as it stood, it would not have been possible to grant leave under Clause XII of the Letters Patent. However, Rule 283 of the Bombay High Court (Original Side) Rules applies to a case where the Plaintiff is returned after it is filed. In a situation such as this when leave is refused, the Plaintiff in that sense cannot Mr Vashi says, be said to have been filed at all. Rule 283 of the Bombay High Court (Original Side) Rules reads thus:

"R.283. Return of plaintiff. — (i) The Court or the Judge in Chambers may at any stage of the suit order the plaintiff to be returned to the plaintiff to be presented to the Court in which the suit should have been instituted.

(ii) When an order for return of the plaintiff is made, the Prothonotary and Senior Master or any officer subordinate to him shall endorse on the plaintiff (a) the date of its presentation, (b) the date of the order for its return, (c) the date on which the plaintiff furnishes a copy of the plaintiff and the date on which it is certified as a true copy by the office of the Prothonotary and Senior Master, as provided in sub-rule (iii) of this rule, and (d) the date of the return of the plaintiff.

(iii) The plaintiff shall be returned only after the plaintiff has furnished, for the record of the Court, a copy of the plaintiff and the said copy has been certified as a true copy by the office of the Prothonotary and Senior Master."

4. I will allow the Review Petition on the limited ground that at the time of my order under Revision, all that was before me was the Leave Petition and nothing further. Leave had to be granted or refused. I, therefore, allow the Petition to the extent of the second portion of paragraph 4 directing return of plaint under Rule 283 of the Bombay High Court (Original Side) Rules.

5. The Review Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)