

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

NOTICE OF MOTION NO. 1362 OF 2019

IN

SUIT NO. 3367 OF 2008

The Shipping Corporation of India Ltd. ... Applicant/Plaintiff
Versus
Sodexo Food Solutions India Pvt. Ltd. ... Respondent/Defendant

Ms. Usha Shrivastava i/b M/s Consulta Juris for the Applicant/Plaintiff.
Mr. Siddharth Ranade, Ms. Shivani Garg, P. Jain i/b Trilegal for the
Defendant.

CORAM : R.I. CHAGLA, J.

DATED : 28th JUNE, 2019.

P.C. :

1 The learned Counsel for the Applicant states that the Notice of Motion is taken out for restoration of the Suit which was dismissed by order dated 04.04.2019. In the order dated 14.01.2019 it was expressly ordered that the evidence affidavit, affidavit of documents and compilation of documents be filed on or before 01.03.2019 and the discovery and inspection be completed and statement of admission and denial be exchanged on or before 08.03.2019. It was further ordered that there would be no extension of time and in default of compliance, the Suit stands dismissed without reference to the Court. Thereafter, upon non-

compliance with the said order, the Suit has been shown as dismissed on 04.04.2019.

2 The learned Counsel for the Applicant states that in view of the amendment to the Suit being allowed, voluminous documents had to be compiled and considered time was expended to prepare the evidence affidavit. It is in view thereof that evidence affidavit was not filed along with affidavit of documents and compilation of documents on or before 01.03.2019. Hence, the time line stipulated in order dated 14.01.2019 could not be met and as a result the Suit stood dismissed without further reference to the Court.

2 The learned Counsel for the Respondent/Defendant states that the evidence affidavit itself was affirmed on 19.03.2015 as admitted by the Applicant in paragraph 5 of the affidavit in support of the Notice of Motion. The compilation of documents was also ready on that date. Merely because the claim was allowed to be reduced and the plaint accordingly amended, does not justify the Plaintiff in not complying with the directions of this Court in order dated 14.01.2019. In fact the amount of claim was reduced by consent of parties. Accordingly, he has opposed the Notice of Motion.

3 Having considered the submissions, I am of the view that the

Plaintiff should be given an opportunity to pursue its Suit. Considering that the plaint was amended and thereafter, the Plaintiff had to compile voluminous documents to justify the reduced claim and accordingly, there appears to be some justification in the affidavit in support of the Notice of Motion for the delay in filing the evidence affidavit, affidavit of documents and the compilation of documents. The affidavit of evidence in Examination-in-chief may have been affirmed on 19.03.2015, but this had to be revised in the light of the amended plaint.

4 In view thereof, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b) by condoning the delay in taking out the Notice of Motion and by restoring the Suit which was shown as dismissed in order dated 04.04.2019.

5 The Plaintiff is directed to serve the amended plaint on the Defendant and the Defendant is granted an opportunity to file its additional written statement to the amended plaint within a period of four weeks.

6 Accordingly, Notice of Motion is disposed of in the above terms.

(R.I. CHAGLA, J.)