

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

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NOTICE OF MOTION NO. 1307 OF 2017
IN
NOTICE OF MOTION NO. 1202 OF 2016
IN
COMMERCIAL APPEAL (L) NO. 509 OF 2014
IN
ARBITRATION PETITION NO. 33 OF 2011

Central Warehousing Corporation .. Applicant

In the matter between

Central Warehousing Corporation .. Appellant

Vs.

Essar Oil Ltd. .. Respondent

Mr. R. K. Sharma a/w. Mr. Bhaskar Malkhede and Mr. Satyajeetsingh
Raghuwanshi for the Applicant.

Mr. Gandhar Raikar for the Respondent.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATE : 30th JANUARY, 2020.

P.C. :

1. Vide above captioned Notice of Motion restoration of
Commercial Appeal (L) No. 509 of 2014 is prayed for.

2. Relevant facts are that an award in favour of the Appellant was set
aside by the learned Single Judge on 28.01.2014 when Arbitration
Petition No. 33 of 2011 filed by the Respondent was allowed. A belated

Appeal was filed against the order dated 28.01.2014 on 08.08.2014. On being scrutinized objections were listed including the objection that the Memorandum of Appeal was not accompanied by the requisite Court fee payable in a sum of ₹ 38,415/-. The objections not being removed, the Prothonotary and Senior Master of this Court passed a peremptory order dated 15.01.2015 to the effect that the objection be removed by 29.01.2015 and if not removed the Appeal would be treated as having been dismissed on account of objections not being removed.

3. The objections were not removed in terms of the peremptory order dated 15.01.2015. The Appeal was consigned to the record room treating the same as having been dismissed.

4. A belated Notice of Motion No. 1202 of 2016 was filed praying that the Appeal be restored and another opportunity be granted to the Appellant to remove the objections. The same was allowed on 29.11.2016 once again passing a peremptory order that if the objections were not removed within one month, the order passed by the Prothonotary and Senior Master shall stand vacated.

5. The Appellant did not remove the objections and in terms of peremptory order dated 29.11.2016, the Appeal was consigned to the record room.

6. On 28.04.2017 above captioned Notice of Motion has been filed praying that the Appeal to be restored once again.

7. It is pleaded in the Notice of Motion that on account of

demonetization of ₹ 500/- and ₹ 1000/- denomination currency there was a cash crunch and thus the Court fee could not be paid.

8. We take judicial notice of the fact that the cash crunch lasted for about two months. After two months withdrawal of ₹ 25,000/- a month by an individual and ₹ 1,00,000/- by corporate was permitted. That apart during the period banking activities continued. Money was transmitted electronically as well as by cheque. We see no reason why the Appellant did not tender the payment in the Treasury to obtain Court fee by cheque or by electronic transmission.

9. Learned Counsel for the Appellant states that on merits the Appellant has a very strong case.

10. Whilst it may be true that strong cases need to be decided in a manner where the cause of justice is furthered and needless to state cause of justice warrants adjudication on merits. But, at the same time a Courts procedure should not become a test of the patience of the opposite party.

11. The impugned Judgment is dated 28.01.2014. Today is 30.01.2020. Six years have elapsed.

12. The negligence in the instant case to prosecute the Appeal is evidenced by the fact that at each stage the Appellant has been negligent. Limitation to file the intra Court Appeal is 30 days. The impugned order dated 28.01.2014 is in challenge in the Appeal which was filed on 08.08.2014. This is the first stage of negligence. When

filed, there was no demonetization. Everybody knows that Court fee has to be affixed on Appeal. The Court fee was not affixed. The peremptory order dated 15.01.2015 was not complied with till 29.01.2015. In terms of peremptory order, the Appeal was treated as having been dismissed. It took the Appellant one year and ten months to file Notice of Motion No. 1202 of 2016 which was filed on 29.11.2016.

13. The benevolent order dated 29.11.2016 was enough warning to the Appellant to remove the objections within one month. The Appellant did not do so.

14. The consequence of the peremptory direction in the order dated 29.11.2016 having ensued, the instant application was filed once again belatedly after five months.

15. The negligence at each stage does not warrant exercise of any further discretion in favour of the Appellant by the Court.

16. The Application is dismissed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

**Arjun
M.
Kadam**

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by Arjun M.
Kadam
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