

Arjun

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

***NOTICE OF MOTION NO. 1 OF 2021
IN
APPEAL NO. 265 OF 2019***

N.K. Proteins Ltd.	...Petitioner
Versus	
Modern India Ltd. & 41 Ors.	...Respondents

Mr. Kevic Setalwad, Senior Counsel a/w Mr. Nimay Dave, Mr. Vishal Maheshwari and Ms. Kamini Pansare i/b V. M. Legal, for the Applicant/Appellant.

Mr. Kyrus Modi i/b Rashmikanth and Partners, for the Respondent Nos. 1 to 4 (Orig. Plaintiffs).

Mr. Vaibhav Bhure, Mr. Shlok Parekh and Mr. Tarak Shah i/b Vaish Associates, for the Respondent No. 6.

Mr. Mohit Prabhu i/b Cyril Amarchand Mangaldas, for the Defendant No. 1 in the Suit.

NMA No. 1 of 2021 allowed. Appeal as well as NMA(L) No. 2744 of 2014 restored to file. Office objection to be complied with within 2 weeks.

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**

DATED : 27th APRIL, 2022

P.C. :

1. The Applicant i.e. Original Appellant by this Notice of Motion is seeking restoration of Appeal No. 265 of 2019 and the Notice of Motion Lodging No. 2744 of 2014.

2. Mr. Kevic Setalwad, learned counsel appearing for the Applicant submitted that, the Appeal was filed challenging the order dated 2nd September, 2014 along with Notice of Motion Lodging No. 2744 of 2014 seeking interim relief. On 17th June, 2015, the Appeal was admitted and ad-interim order was passed. He submitted that, the Appeal was dismissed for non-removal of office objections pursuant to the order dated 14th December, 2018 passed by this Court. He submitted that, when the said order dated 14th December, 2018 was passed none appeared for the Applicant and therefore, the Applicant was not aware about the said order. He submitted that, the Applicant came to know about the same on 05th February, 2019 and immediately on 14th February, 2019 present Notice of Motion seeking restoration of Appeal and Notice of Motion is taken out.

3. On the other hand Mr. Modi, appearing for the Respondent Nos. 1 to 4 i.e. Original Plaintiffs strongly opposed Notice of Motion. He submitted that, the Applicants are delaying the hearing of Appeal and therefore the Notice of Motion seeking restoration be dismissed. Alternatively he submitted that, even if the Notice of Motion is restored the

stay which was operating during the pendency of the Appeal be not continued.

4. The factual position on record show that the Appeal was admitted on 17th June, 2015 and ad-interim order was passed. It further appears that the present Appeal along with other Appeals came up before this Court on 14th December, 2018 and following common order is passed.

“Heard the learned counsel appearing for the Appellants and the learned counsel appearing for the Respondents. Time of four weeks is granted to the Appellants to remove all office objections and get the Appeal numbered. If compliance is not made within the stipulated period of four weeks from today, Appeals shall stand dismissed for non-prosecution without further reference to the Court.”

5. The aforesaid order was passed in about 10 connected Appeals. Mr. Kevic Setalwad, learned Senior Counsel appearing for the Applicant submitted that, when the aforesaid order was passed none appeared for the

Applicant. He submitted that the period of four weeks granted by order dated 14th December, 2018 expired on 11th January, 2019, however the Applicant was not aware about the same. The record further shows that on 18th January, 2019 the learned Prothonotary & Senior Master passed following order on the Notice of Motion (L) No. 2744 of 2014:

“Applicants and/or their Advocate to remove office objections on the Notice of Motion and get the same numbered and registered on or before 08.02.2019, failing Notice of Motion to stand rejected for non-removal of office objections under O. S. Rule 986.”

6. The learned senior counsel appearing for the Applicant submitted that on 05th February, 2019 when the Applicant went to remove the office objections in Notice of Motion Lodging No. 2744 of 2014, the Applicant came to know about the dismissal of Appeal by aforesaid order dated 14th December, 2018. It appears that consequently the Notice of Motion Lodging No. 2744 of 2014 also came to be dismissed.

7. Thus the Applicant came to know about dismissal of Appeal

for non-removal of office objection on 05th February, 2019 and immediately on 14th February, 2019, the present Notice of Motion has been taken out for restoration of Appeal and of Notice of Motion. The factual position shows that the Applicant was not aware about the order dated 14th December, 2018 and therefore the Applicant failed to take steps for removal of office objections. The record shows that as soon as the Applicant came to know about the dismissal of Appeal immediately Notice of Motion is filed. Thus there is no substance in the contention of the Respondents that for avoiding hearing of the Appeal, the Applicant has not taken any steps. Thus in the facts and circumstance of this case we are satisfied that the sufficient cause is made out for restoration of Appeal and Notice of Motion Lodging No. 2744 of 2014. Thus, this Notice of Motion is allowed in terms of prayer clause (a).

8. The Applicant has taken immediate steps for restoration of Appeal. This Court passed ad-interim order on 17th June, 2015 which was in operation till 11th January, 2019. Therefore, there is no substance in the submission regarding not restoring the ad-interim order. Thus it is needless to clarify that the interim Order operating in Appeal from 17th June, 2015

and which was in operation till 11th January, 2019 to continue till further orders.

9. The Applicant to remove the office objections within a period of 4 weeks from today.

9. The hearing of Appeal is expedited on the request of learned counsel for the Respondent Nos. 1 to 4.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.