

jsn

Digitally signed
by JITENDRA
SHANKAR
NIJASURE
Date:
2024.02.29
18:48:22
+0530

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

INTERIM APPLICATION NO.700 OF 2021
IN
ARBITRATION PETITION NO.374 OF 20218

Venus Stock Brokers Private Ltd.

...Applicant /
Petitioner

Versus

Swastika Investment Ltd.

...Respondent

Ashmita Goradia i/b. Vaibhav Jagdale for the Applicant / Petitioner.

CORAM : R.I. CHAGLA J.
DATE : 28TH FEBRUARY, 2024.

ORDER :

1. The learned Counsel appearing for the Applicant / Original Petitioner has sought leave to carry out amendment in the cause title of the Interim Application by correcting the name of the Respondent which is "Swastika Investmart Ltd.", inadvertently mentioned as "Swastika Investment Ltd." Leave is granted. Amendment shall be carried out forthwith. Re-verification is dispensed with.

2. By this Interim Application, the Applicant / Original

Petitioner has sought recall of the order dated 8th February, 2021 which had dismissed the Arbitration Petition and for restoring the matter back on file.

3. The Applicant / Original Petitioner has stated that the Petition had been listed for hearing for the first time on 25th January, 2021 and since the matter was suddenly listed, the Advocate for the Applicant / Petitioner took some time to locate the papers and get instructions. The matter was thereafter adjourned to 8th February, 2021.

4. The Applicant / Original Petitioner has stated that when the matter was called out on 8th February, 2021, the Advocate for the Petitioner was present and attempt was made by the Advocate to log into the hearing and even make submissions but the hearing being virtual due to Covid-19 pandemic, this Court could not hear the Advocate for the Petitioner on account of connectivity issues. The Advocate for the Petitioner had sought to bring it to the notice of the Court that he was present and would proceed with the matter. However, due to low internet bandwidth, the Advocate for the Petitioner was inaudible and the Court was awaiting a response. The

Court had accordingly kept the matter back and at 4.25 p.m. when the matter was called out, the Advocate for the Petitioner was engaged in a matter before another bench of this Court. The holding Advocate appearing before this Court and informed this Court of this and requested for an adjournment on that account. This Court declined to grant adjournment. It has been recorded in the said Order that when the matter was called out again at 4.25 p.m., counsel for Petitioner refused to go on with the matter and after 4.30 p.m. simply signed out when the Court was considering the Petition.

5. The Applicant / Original Petitioner has submitted that the holding Advocate had commenced arguing in the matter and while this Court was perusing the Petition again, due to internet connectivity, the holding Advocate was logged out of the hearing at around 4.35 p.m. and despite trying to re-log into the hearing, the host of the virtual hearing ended the meeting and this was intimated to the Advocate for the Petitioner.

6. The Applicant / Original Petitioner has accordingly submitted that due to technical glitches in the virtual hearing, this Court be pleased to take note the same recall the said order or

otherwise the Petitioner will suffer grave prejudice, if the matter is not restored back to file. Accordingly, the present Interim Application has been filed.

7. The learned Advocate for the Petitioner has tendered Affidavit of Service dated 27th February, 2024 which shows that the Respondents have been served with the Interim Application along with notice dated 23rd February, 2024, by speed post and there is a copy of receipt given by the postal authority which is at Exhibit B to the Affidavit of Service. A copy of the track report showing delivery is annexed at Exhibit C to the said Affidavit. It is further mentioned in the Affidavit of Service that the Interim Application was also sent by email dated 23rd February, 2024 to the Respondents and which email has been annexed at Exhibit D to the Affidavit of Service. The Affidavit of Service is taken on record. The Respondents inspite of service has failed to make an appearance.

8. I have considered the averments in the Interim Application as well as noted that the Respondents are not present inspite of service. It appears that the order dated 8th February, 2021 of which recall has been sought was during the Covid-19 pandemic

when there were virtual hearings. However, due to technical glitches, the Advocate for the Petitioner, inspite of efforts made, was logged out during the hearing. Thereafter when the matter was again called out, the holding Advocate for the Petitioner had started the hearing but due to technical glitches was logged out. There appears to be no deliberate attempt made by the Advocate for the Petitioner to refuse to go on with the Arbitration Petition. This Court when passing the order dated 8th February, 2021 dismissing the Arbitration Petition was not aware that it was due to technical glitches that the Advocate for the Petitioner was unable to go on with the matter.

9. In that view of the matter, I find that a satisfactory explanation has been given by the Applicant / Original Petitioner for the restoration of the Arbitration Petition by recall of the order dated 8th February, 2021. Hence, the following Order:-

(i) The order dated 8th February, 2021 is recalled and the matter is restored back to file and shall be placed for admission on 11th March, 2024.

(ii) Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]