

Sharayu Khot.

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

NOTICE OF MOTION NO. 1215 F 2019

IN

ADMIRALTY SUIT NO. 65 OF 2015

M.V. Pristine GV (IMO No. 9118422)

...Applicant/Orig.
Defendant No. 1

In the matter between

Solitaire Marine & Offshore Pvt.Ltd.

...Plaintiff

Versus

M.V. Pristine GV (IMO No. 9118422) & Anr.

...Defendants

Kayush Zaiwalla i/by Sapana Rachure for the Applicant/Defendant
No. 1.

Ruchir Goenka a/w Akshat Golia i/by Bose & Mitra & Co. for the
Plaintiff.

CORAM : R.I. CHAGLA J

DATE : 7 May 2024

ORDER :

1. By this Notice of Motion, the Applicant/original
Defendant No. 1 has sought condonation of delay of 54 days in filing
the present Notice of Motion and for recall of the order dated 18th

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July 2018.

2. Further condonation of delay of 23 days has been sought for in filing the present Notice of Motion and for recall of order dated 8th August 2018.

3. Satish Shyamsunder Gaichor, the Constituted Attorney of the Applicant Company has affirmed the Affidavit in Support of the Notice of Motion. The Deponent has stated in paragraph 4 of the said Affidavit that the order dated 25th April 2018 had been passed by this Court by which the documents of the Plaintiff were marked and the Commissioner appointed for recording of evidence. He has stated that the said order dated 25th April 2018 was communicated by him and he requested to meet the Counsel and give appropriate instructions in the matter. The Deponent has further stated that he is the only one looking after all the legal matters pertaining to the Applicant.

4. Further, during the May vacation, the Deponent's meetings with the Advocate and the Counsel could not take place. Accordingly, the Deponent decided to meet the Counsel in second

week of June 2018. On 15th June 2018, Writ Petition No. 745 of 2018 was to come up and the Deponent was busy in preparation of the same. Thereafter, from 18th June 2018 till 25th June 2018, the Deponent was held up and required by the Advocate for Anticipatory Bail Application No. 2198 of 2017 filed by the accused in relation to the Complaint filed by the Applicant. The Deponent has thereafter, stated that on 29th June 2018 he left Dubai and returned on 3rd July 2018. The Deponent could not give instructions for the cross examination scheduled on 2nd July 2018. The Deponent has annexed at Exh.D a copy of the travel details.

5. Thereafter, the Deponent in paragraph 5 of the said Affidavit in Support of the Notice of Motion stated that he communicated the order dated 18th July 2018 and attended the captioned matter on 1st August 2018. He has annexed copy of the order dated 1st August 2018, wherein it is mentioned that the Deponent present had referred to a copy of the Power of Attorney which he claims authorises him to represent the Defendant No. 1. However, this Court upon perusal of the said Power of Attorney found that the Defendant No. 1 did not authorise the Deponent to engage the advocates in this Court to represent the matter and/or to defend

any Suit.

6. The Deponent has in paragraph 6 of the Affidavit in Support of the Notice of Motion states that on 8th August 2018, he was in this Court. However at the same time Anticipatory Bail Application No. 2198 of 2017 was being argued and therefore, the captioned Suit could not be attended. It is by the said order dated 8th August 2018 that the Defendant's evidence was closed and the matter was placed for arguments.

7. The Deponent of the said Affidavit has stated that the Applicant was ready to go on with the matter, however, due to genuine, sudden and unforeseeable circumstances, the Deponent could not instruct the Advocates and the Advocates had taken discharge. The present Application is bonafide and in the interest of justice. The Applicant will in future will be diligent. Further, the delay in filing the present Notice to Motion is bonafide and irreparable harm will be caused to the Applicant, if the present Notice of Motion is not allowed.

8. The learned Counsel appearing for the Plaintiff has

vehemently opposed the relief sought for in the Notice of Motion. He has referred to the fact that on 25th April 2018, an order had been passed by this Court for cross examination of PW.1 and directing the parties to complete the recording of evidence of PW.1 by 15th July 2018. He has submitted that the Commissioner appointed by this Court had by email dated 5th June 2018 fixed the date for cross examination. The Applicant has sufficient notice that the matter is to come up on 18th July 2018 and inspite of which, on that date, the Defendant did not remain present for cross examination. The Advocate representing the Defendant No. 1 upon being called by the Commissioner informed that the Advocate will be taking a discharge in the matter. Thereafter, the Advocate for the Applicant vide email dated 7th July 2018 sent at 5.30 p.m. informed that she wants discharge in the matter. It was stated in the order passed on 18th July 2018 about closing of evidence of PW.1. Further on 1st August 2018, the Deponent as representative of the owners of Defendant No. 1 appeared for the Applicant and as aforementioned the Court has observed that he has no authority to appear after perusing the Power of Attorney and the matter was stood over to 8th August 2018 as a last chance. By the said order dated 8th August 2018, the evidence was closed, as none appeared for the Defendant No. 1.

9. The learned Counsel appearing for the Plaintiff has further submitted that the present Notice of Motion has been filed on 10th October 2018. The Notice of Motion was dismissed for default of the Applicant on 27th June 2019 and thereafter, the said order was recalled by the Court on 29th August 2019. He has submitted that there is total lack of diligence on the part of the Applicant and/or its Counsel in pursuing the Notice of Motion and accordingly, the Notice of Motion deserves to be dismissed.

10. Having considered the averments in the Affidavit in Support of the Notice of Motion and noting that on 2nd July 2018 when the cross examination of PW.1 was scheduled, the Deponent of the said Affidavit in Support of the Notice of Motion was travelling and not in India to give instructions for the cross examination as borne out by the document annexed at Exh.D to the said Affidavit.

11. Further, there are reasons given in paragraph 4 as to attempts being made by the Deponent to meet the Counsel and due to May vacations, the same could not happen and thereafter the first meeting took place in the second week of June 2018. There were proceedings apart from the captioned Admiralty Suit which required

the Deponent of the said Affidavit to attend and which has also been stated in paragraph 4 of the Affidavit in Support of the Notice of Motion. Further in paragraph 6, it is stated that on 8th August 2018, the Deponent was attending the Anticipatory Bail Application No. 2198 of 2017 which was being argued and accordingly, could not attend the captioned Suit.

12. I find that there are reasons given in the Affidavit in Support of the Notice of Motion, though not entirely satisfactory, but to some extent explains the non-attending of the Court by Defendant No. 1 on the date when the cross examination of PW.1 was scheduled and thereafter, when the evidence had been ordered to be closed. Accordingly, I grant the relief sought for in the Notice of Motion, subject to imposition of costs. Hence, the following order is passed.:-

(i) The delay in filing present Notice of Motion is condoned.

(ii) Orders dated 18th July 2018 and 8th August 2018 passed in the captioned Suit are recalled, subject to

payment of costs of Rs. 1,00,000/- (Rupees One Lakh only), which shall be paid by the Defendant No. 1 to the Plaintiff by way of Pay Order within a period of two weeks from the date of this order.

(iii) Notice of Motion is accordingly, disposed of.

13. At this stage, the learned Counsel for the Plaintiff has referred to the fact that the captioned Suit was filed as Admiralty Suit and not correctly as Commercial Admiralty Suit.

14. Accordingly, the Registry is directed to permit the Plaintiff to carry out the change to reflect the captioned Suit as Commercial Admiralty Suit.

[R.I. CHAGLA J.]