

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7269 OF 2015

Capt. D.K.Tewari .. Petitioner
Versus
Shipping Corporation of India Ltd. .. Respondent

WITH

WRIT PETITION NO. 9422 OF 2016

Shipping Corporation of India Ltd. .. Petitioner
Versus
S.G.Mistry .. Respondent

WITH

INTERIM APPLICATION (ST) 30964 OF 2022

IN

WRIT PETITION NO. 9422 OF 2016

Divya Shah Associates .. Applicant

IN THE MATTER BETWEEN:

Shipping Corporation of India Ltd. .. Petitioner
Versus
S.G.Mistry .. Respondent

WITH

WRIT PETITION NO. 9421 OF 2016

Shipping Corporation of India Ltd. .. Petitioner
Versus
Capt. D.K.Tiwari .. Respondent

WITH

WRIT PETITION NO. 9420 OF 2016

Shipping Corporation of India Ltd. .. Petitioner
Versus
S.K.Nanal (Deceased)
1a. Shailaja Nanal wd/o. S.K. Nanal and Ors. .. Respondents

WITH

WRIT PETITION NO. 7270 OF 2015

S.K. Nanal .. Petitioner
Versus

Shipping Corporation of India Ltd. .. Respondent

WITH
WRIT PETITION NO. 7256 OF 2015

S.G.Mistry .. Petitioner

Versus

Shipping Corporation of India Ltd. .. Respondent

WITH
INTERIM APPLICATION (ST.) NO. 31016 OF 2022
IN
WRIT PETITION NO. 7256 OF 2015

Divya Shah Associates .. Applicant

IN THE MATTER BETWEEN:

S.G. Mistry .. Petitioner

Versus

Shipping Corporation of India Ltd. .. Respondent

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- Mr. Chirag Modi a/w. Ms. Manisha Virkhare, Ms. Ankita Ved and Mr. Nandkishor Supal i/by Divya Shah Associates for Petitioner
 - Mr. Satyaprakash Sharma for Respondent – Shipping Corporation of India
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 25, 2023.

P.C.:

1. Heard Mr. Modi, learned Advocate for Petitioner and Mr. Sharma, learned Advocate for Respondent.

2. Mr. Modi would contend that by a common order dated 09.04.2015 the learned Trial Court has dismissed the application filed by the Petitioner under Order XI Rule 21 seeking dismissal of the suit filed by Shipping Corporation of India on the ground that the Plaintiff

had failed to provide documents on the basis of which the cause of action is stated in the suit plaint. He submitted that by the impugned order dated 09.04.2015 the learned Trial Court held that the Plaintiff has failed to provide the documents but did not stay the proceedings in the suit. He would submit that the said order is a cryptic order and does not essentially decide the application filed under Order XI Rule 21 which has resulted in filing of the present Writ Petition before this Court.

3. Admittedly, the facts are that the Petitioners were employees of the Shipping Corporation of India and served in its London office between 1995-98. At the then time they received salary in London and were liable to pay tax which was paid by them in London on the advice of the appointed consultant, who was appointed by Shipping Corporation of India.

4. Mr. Sharma would refute the submissions made by Mr. Modi on the above issue.

5. Be that as it may, it further transpires that the three Petitioners before me subsequently took VRS and received their retirement emoluments in entirety from Shipping Corporation of India some time in 2001. However in 2003, for the first time the Plaintiff - Shipping Corporation of India raised certain claims and demands against the Petitioners. These claims pertain to the amounts which the Shipping Corporation of India had paid to the Revenue Authority in

London for as tax on behalf of the Petitioners. Mr. Modi would submit that it was the case of the Plaintiffs that some part of the amount was paid by the Petitioner whereas some component was paid by the employer i.e. Shipping Corporation of India. Hence to that extent the Shipping Corporation of India raised the claim against the Petitioners in the suits.

6. In the aforesaid background, the Petitioners who are Defendants in the suit sought details of the documentary evidence on the basis of which the suit claim was raised. Since the Plaintiff - Shipping Corporation of India failed to provide the same, the Petitioners were constrained to file application below Order XI Rule 21 seeking peremptory dismissal of the suit. That application was resisted by Shipping Corporation of India, upon which the learned Trial Court passed the impugned order dated 09.04.2015. Hence, the present bunch of Writ Petitions are before me.

7. Mr. Modi would submit that despite the pendency of the suit since 2004, the necessity for moving this Court has now arisen, in view of the fact that the learned Trial Court has now decided to proceed with the suit proceedings in the Trial Court as they stand.

8. Mr. Sharma submitted that he needs to obtain instructions and accordingly make submissions, which he would do so on the next date. He requests for accommodation upto four weeks.

9. In the meanwhile, it is directed that the learned Trial Court

shall defer the hearing of the suit proceedings.

10. Respondent in the present Writ Petitions shall consider if they desire to file any Affidavit-in-reply and if so, same be filed on or before the next date with advance copy to the Petitioner.

11. In the meanwhile, proceedings before the learned Trial Court in Suit No. 7606 of 2004, Suit No. 7685 of 2004 and Suit No. 7605 of 2004 shall be deferred till the next date.

12. Stand over to **22nd February, 2023.**

[MILIND N. JADHAV, J.]