

Oil & Natural Gas Corporation	Appellant
Vs.		
M/s. Essar Shipping Ltd.	Respondent

Sarvasri D.D. Madon, Senior Counsel a/w
P.A. Sawant i/b M/s. Vyas & Bhalwal for
the Appellant.

Sarvasri Sanath Mukharjee, Senior Counsel
i/b Ashok Purohit for the Respondent.

CORAM: SRI R.M.S. KHANDEPARKAR &
SRI P.B. MAJMUDAR, JJ.

DATED: APRIL 30, 2008

P.C:

1. Heard. By the present notice of motion, the applicant/appellant is seeking restoration of the Appeal No.74 of 2007 which was dismissed for default on 17-8-2007.

2. The reason given for the absence of the Advocate is that the cause list circulated by the Advocates' Association, and stated to have been received by the Advocate on record in the appeal, did not mention the appeal in question to have been fixed for hearing on admission. The contention is sought to be seriously disputed on behalf of the respondent.

3. All said and done, fact remains that immediately after the dismissal of the appeal, it appears that on the very day, the Advocate had attempted to approach the Court to seek restoration of the appeal. However, as the Court working was over, the Bench had risen at about 4:30 p.m. and, therefore, the said Advocate even could not reach the Court before that time. The present notice of motion was taken out immediately within two days thereafter. In these circumstances, it is apparent that the appellant is genuinely pursuing with the matter and has not been negligent as such in that regard.

4. Merely because the Advocate was absent on account of being unaware of the date of hearing of the matter, the party cannot be penalised and considering the same, we find that there is sufficient cause for restoration of the appeal and hence the notice of motion is allowed and is made absolute in terms of the prayer clause (a). The Appeal No.74 of 2007 to be fixed for hearing on admission on 23-6-2008. The notice of motion stands disposed of.

(P.B.Majmudar, J.)

(R.M.S.Khandeparkar, J.)

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