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

INTERIM APPLICATION NO. 1626 OF 2020
IN
APPEAL (L) NO. 81 OF 2020

Islamic Republic of Iran
(through Iranian Islamic
Republic Railways, Tehran,
Iran) ….Applicant/Appellant
Org. Defendant No.1

In the matter of:

Islamic Republic of Iran
(through Iranian Islamic
Republic Railways, Tehran,
Iran) ..Appellant/
Org. Defendant No.1

V/s.

K.T. Steel Industries LLP
a partnership firm having its
Address at Office No.208,
Shiv Smriti Chambers,
2nd Floor, 49A,
Dr. Annie Besant Road, Worli,
Mumbai 400 018. ..Respondent No.1/
Original Plaintiffs

2. State Trading Corporation of India
Pvt. Ltd., a Government of India
owned Company incorporated
under the Companies Act, 1956
and having its registered office at
Chandralok, 36 Janpath,
New Delhi and having its
branch office at Air India Building,
Nariman Point, Bombay .. Respondent No.2/
Original Defendant No.2

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Mr. Aashish Kamat, Sr. Advocate a/w. Ashutosh Bhadang, Mohd. Rehan Ansari i/b.Saeed Akhtar for Railways of the Islamic Republic of Iran (RAI)

Mr. Sharan Jagtiani, Sr. Advocate a/w. Mr. Vishal Narichania, Mr. Rahul Jain, Ms. Akriti Shirha i/b. HSA Advocates for the Respondent No.1.

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CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.
RESERVED ON : 27th FEBRUARY, 2023
PRONOUNCED ON : 10th MARCH 2023

JUDGMENT (PER K. R. SHRIRAM, J.):

1. At the outset, Mr. Kamat submitted that he was appearing for an entity by name "The Railways of the Islamic Republic of Iran (RAI)". He made this clear again on few occasions.

2. This is an Application for condonation of delay of over 12 years in filing the Appeal.

3. The Applicant is the Islamic Republic of Iran, who floated a Global Tender for the purchase of Railway wagons. At the relevant time, the Government of India had canalized the export of Railway wagons through the State Trading Corporation which was the second Defendant in the suit that Respondent No.1 had filed. Respondent No.1 submitted a bid and Applicant entered into a Purchase Contract dated 16th March, 1970 with Respondent No.2-State Trading Corporation for the purchase of 492 Railway wagons at U.S.$ 5,584,200/-. Thereafter, a financial agreement was entered into on 12th August, 1970. Respondent No.2 assigned the benefit of contract to Respondent no.1 by a back to back contract executed at Mumbai on 21st November, 1970. The payment was to be made in three tranches by Applicant, i.e., 5% as advance through an LC, another 5% against the

shipment and the balance 90% over a period of nine and half years together with interest under deferred payment scheme. All payments were to be made through the bank of Respondent No.1 and 32 promissory notes were deposited by Applicant in order to cover the 32 installments. We need not go into the rest of the details of the contract.

In view of the price hike in international oil prices in 1972, there was increase in freight charges for the shipment of the railway wagons, and in August 1976 the contract was amended by Addendum No.1 dated 18th August, 1976, By this amendment Applicant agreed to pay to Respondent No.1 freight charges based on the rates as certified by the official recognized bodies of shipping companies, like West Asia (Gulf Conference) or South Shipping Lines (Iran Lines). Applicant agreed to pay the freight charges on the particular date of shipment of 306 wagons which were already shipped and for the balance 186 wagons after deducting an amount of U.S. $ 780 per wagon.

4. After the contract was thus modified, Respondent No.1 continued production and exported the wagons. The claim of Respondent No.1 arose due to the alleged failure by Applicant to pay the freight charges as agreed for 306 wagons in 1973 and 94 wagons shipped in 1977. The suit was instituted on 6th September, 1996. Applicant never appeared. In the judgment dated 16th January, 2008, impugned in this appeal (the impugned judgment) the learned Single Judge (Justice Dr. D.Y. Chandrachud, as he then was) has noted inter alia, that (i) Appellant who was the first

Defendant, against whom the decree has been sought, has been served with the writ of summons, (ii) Appellant has not entered appearance, (iii) Respondent No.1 applied for permission of the Central Government under Section 86 of the Code of Civil Procedure, 1908 on 28th December, 1986 and the permission was received on 21st March, 1996, (iv) As the suit was instituted on 6th September, 1996, the suit was within limitation, after excluding the period when the permission under Section 86 of CPC was applied for and when the permission was received by virtue of the provisions of Section 15(2) of the Limitation Act, 1963, (v) Respondent No.1 has relied upon the affidavit in lieu of examination-in-chief of its Director and the compilation of all documents which has been placed on record mentions the claim of Respondent No.1 has not been controverted since Appellant has not appeared in response to the writ of summons and (vii) The claim of Respondent No.1 has been duly proved on the basis of examination-in-chief of the witness of Respondent No.1 and documentary evidence produced on record.

The Court was pleased to decree the suit as against Applicant in the amount of (a) U.S.$ 1,387,727.83 being the additional freight payment on 304 wagons, (b) U.S. $ 1,696,722.78 being the additional freight payment on 94 wagons, and (c) U.S. $ 484,840 towards damages. In so far as the claim for freight was concerned, the Court has also awarded interest from the respective due dates of respective invoices until the date of the suit at the rate of 9% per anum, and at the same rate from the date of the suit until

payment or realization. On the damages awarded, the Court has awarded interest at the rate of 9% per annum from the date of suit until payment/realization. Costs has also been granted. No relief was claimed against Respondent No.2 -State Trading Corporation.

5. These above facts have been narrated in the delay condonation application because it was Appellant's case that the writ of summons was not served.

6. This Application for condonation of delay was filed on or about 25th February, 2020, after delay of about 12 years and 10 days.

7. On or about 6th December, 2022, Mr. Kamat informed the Court that though the reply was served almost three months ago, sought leave to file rejoinder and the rejoinder would be in the form of an additional affidavit-in-support of Interim Application making out a case for condonation of delay. Leave was granted, subject to payment of costs. We are told cost has been paid.

8. Applicant filed the additional affidavit dated 7th January, 2023. An unaffirmed copy was served in advance on 19th December, 2022 and in response thereto, an additional affidavit-in-reply on behalf of Respondent No.1, affirmed on 21st December, 2022 came to be filed. Hence the dates do not match.

9. Mr. Kamat submitted as under :

(a) RAI is a Government owned company. It is not a branch or body of the Government. RAI is an independent legal personality and financially

independent from Iranian Government. This is evidenced by the Establishment Act of Railways of Iran (Private Joint Stock Co.) and the Articles of Association of RAI expressly provides that any claims of third parties must be filed against RAI as a Joint Stock Company.

(b) Shortly before the Iranian Revolution in 1978, the Establishment Act of Railways of Iran (Private Joint Stock Company) approved by the Iranian Parliament on 7th March, 1977, and the act came into effect on 20th September, 1987 after the Iran revolution, by and under which the Iranian State Railways was dissolved and RAI was established as a private joint stock company. The Act provided that all the assets and liabilities of the State Railways of Iran and Railway Building General Department are transferred to company.

(c) Respondent No.1 has wrongfully filed a suit on 6th September, 1996 purportedly against Islamic Republic of Iran (IRI) through Iranian Islamic Republic Railways seeking unpaid freight charges and damages. The said suit was wrongfully and improperly filed against IRI and not RAI. Since 1987 RAI was totally separate and distinct entity from the IRI, Respondent No.1's cause of action, if any, can be only against RAI and not IRI.

(d) Reliance on the consent given by the External Affairs Ministry and the institution of proceedings against IRI is wrongful and misconceived and RAI has not been impleaded at all.

(e) Papers and proceedings in the said Suit were not served on RAI during the pendency of the proceeding or even after passing of the ex-parte decree

dated 16th January, 2008.

(f) Respondent No.1 had filed Chamber Summons No. 816 of 2005 in the said Suit, incorrectly seeking leave to serve the writ of summons in the suit on Applicant through the Consulate Office of IRI at Mumbai and Embassy of IRI at New Delhi and thus would not be good service on RAI because neither of those offices had any legal authority to accept the service.

(g) Even the Chamber Summons No. 816 of 2005 in execution was also not served on RAI and RAI therefore did not have an opportunity to be heard by the Court on this issue.

(h) Respondent No.1 has wrongfully instituted the Suit against the party against whom it has no cause of action and hence this Court has no jurisdiction.

(i) Respondent No.1 filed Notice of Motion No. 510 of 2016 under Order XXI Rule 22 of CPC to issue notice to IRI and not RAI to show cause as to why the ex-parte decree should not be executed against IRI. Once again instead of directing and serving this application on RAI, Respondent No.1 wrongfully attempted to serve the same on IRI through the Iranian Islamic Republic Railways through its Consulate Office at Mumbai and Embassy Office at New Delhi and various communications were sent to the Consulate Office and the Embassy Office of IRI.

By a letter dated 19th September, 2016, the Consulate General of IRI wrote to Advocates of Respondent No.1 at Mumbai stating that the Consulate is unaware of the proceedings, and is not a commercial entity and

has sovereign immunity.

Later by letter dated 4th October, 2016 the Consulate General of Iran also took a stand that no notice can be served on them unless proper permission was granted by the Ministry of External Affairs. Despite all this, RAI was not served.

(j) Even the Commercial Execution Application No. 36 of 2021 was taken out by the Respondent No.1 in respect of ex-parte decree against IRI as Defendant No.1 and not RAI, and also filed Chamber Summons No.523 of 2019 seeking disclosure of assets of IRI. RAI did not have any notice of the execution application also.

(k) In July 2019, RAI got knowledge of the proceedings when the Ministry of Foreign Affairs of Iran forwarded the papers and proceedings in the matter to RAI, and RAI had to engage Advocates to defend them. As the matter was 23 years old and based on Indian law and filed in English, after obtaining certified copies, this application has been filed.

(l) RAI could not have filed the present Appeal and Application at any point of time prior to July 2019. Only when it was finally made aware of the proceedings of the ex-parte decree, almost 12 years after passing the exparte decree, the application came to be filed.

10. Relying on the judgment of the Apex Court in ***Madan Lal vs. State of U.P. & Others***[1]**,** Mr. Kamat submitted that if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an

1 (1975) 2 SCC 779

appeal from the Order, he should not be made to loose the remedy for no fault of his. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression "the date of award" must mean the date when the order is either communicated to the party or is known by him, either actual or constructive. Hence RAI should be deemed to have been made aware of the order only in July 2019 and only from that date time has to be counted. Therefore, since RAI came to know of the impugned judgment only in July 2019, and the Interim Application along with the Appeal has been lodged on or about 25th February, 2020, the delay at the most is only about eight months.

11. Mr. Kamat also submitted that Respondent No.1 has been economical with truth in as much as Respondent No.1 did not disclose in the plaint that the contract for supply of the railway wagons provided for exclusive jurisdiction of Iranian Courts and if it had only disclosed in the plaint that the contract had provided for such an exclusive jurisdiction of the Iranian Courts, this Court would not have entertained the suit and passed any decree.

12. Relying upon a recent judgment of the Apex Court in ***Arunoday Singh vs. Lee Anne Elton***[2]**,** Mr. Kamat also submitted that when rejection of an apparently meritorious appeal on the ground of limitation is pitted against

2 *2021 SCC Online SC 3285*

deciding the appeal on merits, the Courts are entitled to take a liberal approach in deciding the application for condonation of delay.

13. In short, Mr. Kamat's case was entirely on the basis that the application was being made on behalf of RAI and Respondent No.1 should have sued RAI and not IRI. He totally distanced himself from IRI.

Admittedly against RAI there is no decree.

14. Mr. Jagtiani, submitted as under:

(a) At the outset RAI has no locus to even appear because RAI is not the judgment debtor. RAI is not even Applicant or Appellant, but has appeared after filing an additional affidavit affirmed on 7th January, 2023.

(b) Applicant is abusing due process of law by approaching this Court after gross, unjustifiable and egregiously unexplained long delay of more than 12 years.

(c) In para 11 of the application, Applicant (IRI) states that it came to know about the execution proceeding in the first week of March 2019, but in the additional affidavit filed by someone else-RAI, it says it came to know in July 2019. This contradiction itself is stark and warrants dismissal of the application.

(d) The purported knowledge in March 2019 or July 2019 is belied by IRI's letter dated 19th September, 2016 issued through its Consulate General in Mumbai on behalf of Respondent No.1.

(e) Applicant, which is the Islamic Republic of Iran-IRI, through Iranian Islamic Republic Railways, Tehran, Iran was attempted to be served thrice

by registered A.D. through the Office of Sheriff of Mumbai on 27th June, 1997, 22nd August, 2000 and 1st August, 2003. As the service was not successful, Respondent No.1 even took out Chamber Summons No. 816 of 2005 praying for leave to effect service of writ of summons through Applicant's Consulate at Mumbai, and Embassy at New Delhi. By order dated 26th September, 2005, Chamber Summons No. 816 of 2005 was allowed, and pursuant thereto Respondent No.1 served writ of summons on Applicant through its Consulate at Mumbai and Embassy at New Delhi. This service has been recognized by this Court in the impugned judgment.

(f) Respondent No.1 filed Notice of Motion No. 510 of 2016 under Order XXI Rule 22 of CPC seeking leave to execute the judgment and decree. Vide its letter dated 9th February, 2016 addressed to Applicant's Consulate in Mumbai, Respondent No.1 served a copy of the Notice of Motion. Thereafter numerous letters were addressed by Respondent No.1 informing Applicant about the proceedings before this Court in the said Chamber Summons No. 510 of 2016, but still Applicant did not enter appearance. Repeated letters were sent by Respondent No.1's Advocate to Applicant at Mumbai Consulate Office calling upon them to remain present in the Court, last of which was on 9th September, 2016. For the first time, in response to the Application, Applicant responded by letter dated 19th September, 2016 which has already been referred to earlier.

(g) Subsequently Applicant was informed that the said Notice of Motion No. 510 of 2016 will be taken up by the Court on 28/29th September, 2016,

but the said letter was not accepted stating Applicant had diplomatic immunity.

(h) Since Applicant never appeared in the Court, this Court vide its order dated 7th March, 2018 recorded :

> *"2. … The motion has been duly served on the Defendants. There are three affidavits of service tendered by the Plaintiff. In proof of such service, the first two affidavits dated 11th April, 2016 and 19th September, 2016 indicate that the service was duly accepted by the Defendants through the Consulate Office of Islamic Republic of Iran. The third affidavit dated 7th march, 2018 shows that when a special notice of the notice of motion was sought to be served on the Defendants through the Consulate Office of Islamic Republic of Iran. The third affidavit dated 7th March, 2018 shows that when a special notice of the notice of motion was sought to be served on the Defendants through Consulate Office, there was a refusal on the part of the Consulate Office in accepting the notice. The notice was thereafter also sent by email to the Consulate Office.*
>
> *3. By order dated 26 September 2005 passed by this Court earlier, the writ of summons was allowed to be served on the Defendants through the Consulate Office. The Consulate Office has throughout accepted the notices of the proceedings in the suit and the execution proceedings therein, till refusal of service as indicated in the three affidavits referred to above. In the premises, the service of notice of motion should be treated as complete against the Defendants. The Defendants are absent and do not show any cause."*

(i) Thereafter Respondent No.1 filed Commercial Execution Application No. 36 of 2021 for execution of the judgment and decree. Respondent No.1 also filed Commercial Chamber Summons No.523 of 2019, in the said Execution Application for disclosure of attachment of Applicant's assets. This was served on Applicant at its Consulate General's Office at Mumbai on 28th February, 2019. For the first time Applicant's Advocate entered appearance by attending the hearing of the Chamber Summons No. 523 of 2019. An unaffirmed, but signed affidavit dated 4th January, 2020 by one Mohammed Reza Ebrahimi, was filed by Applicant. This Court, by order

dated 22nd January, 2020 in Chamber Summons No. 523 of 2019 in the Execution Application directed Applicant to make disclosure of, inter alia, its commercial assets and transactions in India within four weeks of such order. It is only when this order of disclosure was made, has Applicant approached this Court by filing the Appeal with the Interim Application for condonation of delay.

(j) Applicant is Iranian Government- Islamic Republic of Iran (IRI) and not RAI. It is a new story that has been propagated by RAI and not the IRI Islamic Republic of Iran. The cause title in the synopsis says "Islamic Republic of Iran ...Appellant/Original Defendant No.1. Paragraph 1 of the Synopsis reads as under;

> *"1. The appellant challenges the ex-parte decree passed on 16th January, 2008 against the foreign State. The sanction granted u/s 86 of C.P.C. is against the Iranian Railways but the plaintiff has instituted the suit against the Government of Iran without any basis. The plaintiff did not serve the summons in accordance with rules and established procedure in law prescribed for service upon the foreign state."*

Therefore, Applicant accepts that the ex-parte decree is against Applicant which is a foreign State and not RAI. Applicant is Government of Iran and a foreign state.

(k) In paragraph 6(a) of the unaffirmed Additional Affidavit, the Applicant states that as decree was against Iran Government, it could not comply with Disclosure Order. In paragraph 7 of the Interim Application No.1628 of 2020, Applicant admits to having agreements with the Indian Government for supply of railway wagons.

(l) In paragraph 7(a) of the unaffirmed Additional affidavit, it mentions

that Iran Government had floated global tenders. In paragraph 3 of Interim Application Nos.1626 and 1627, Applicant states that it was Iran Railways that floated global tenders.

(m) Assuming without admitting that the Iran Railway was a separate legal entity, Iran Railways is overseen entirely by the Iran Government's Ministry of Roads and Urban Transportation. The Articles of Association of Iran Railways and any amendments thereto, are passed by Iran Government at proposal of Iran Government's Ministry of Roads and Urban Transportation. All the shares of Iran Railways are owned by Iran Government. The persons in the various organs of Iran Railways are the Ministers of Iran Government and/or elected by Ministers of Iran Government. The Constitution of 1979 of the Iran Government, provides that Railways are public property and at the disposal of Iran Government. The Iranian Government, through its Ministries of Railway has signed various agreements with other companies pertaining to railways on behalf of Iran Railways, particularly with Indian Government worth more than USD 2 billion for co-operation in the rail sector which was signed in 2018.

Hence the interim application has to be dismissed with substantial costs.

15. After having heard the parties and also having considered the affidavits, in our view the application is unsustainable. First of all there is no acceptable explanation for the delay made out in the application. Moreover, none appeared for Applicant. Further it is quite clear that

Respondent No.1 had served the writ of summons on Applicant through its Consulate General Office in Mumbai and the Embassy in Delhi pursuant to the leave granted by this Court. In the ex-parte decree the Court has accepted it as good service. The IRI, though being aware of such a suit being filed, did not pay any heed to the orders and judgments given by this Court. It is for that reason it did not take any steps until this Court passed the order directing Applicant to disclose its assets.

16. The Appeal has been filed along with application for condonation of delay by IRI and no one else. Just because the cause title states "through Iranian Islamic Republic Railways, Tehran, Iran" it only means c/o. Address or continued through whom the Islamic Republic of Iran is being sued. In fact, Applicant, namely the IRI has also accepted this position and in the challenge stated in the synopsis and dates of the events that the Applicant (IRI) challenges the ex-parte decree against the Appellant State, Respondent No.1 has instituted the suit against the Government of Iran without any basis and Respondent No.1 did not serve the summons in accordance with Rules and established procedure prescribed for service upon a foreign State. Even in the memorandum of grounds annexed to the Memorandum of Appeal, Applicant, namely IRI in ground (s), (v) and (w) states that:

> *"s. The learned Trial Court with respect failed to appreciate that it is prohibitory to send the summons directly to the party to the suit and it has to be sent through the Government of India, Ministry of External Affairs under Order 5 Rule 26 of C.P.C.*
> ..
> *v. The ld. Trial Court with respect failed to appreciate that there is a Sovereign Immunity granted in case of foreign State if the foreign State itself made a party.*

w. The learned Trial Court with respect failed to appreciate that the Government of India has signed the United Nations Convention on Jurisdictional Immunities of States and their property on 12th January, 2007.

Therefore, Applicant is the Government of Iran. The ex-parte decree is also against the Government of Iran and not RAI. In the additional affidavit-in-support Government of Iran is taking different and distinct stand through RAI that RAI is a separate legal entity and has to be sued in its own name. In paragraph 2(dd) of the Appeal, Applicant states that Defendant No.1 is the Iran Railways who signed the purchase contract. However, in the synopsis to the Appeal memo, Applicant states that it was IRI, i.e., Islamic Republic of Iran that has signed the purchase contract.

17. Mr. Kamat, relying upon the judgment of the Division Bench of this Court in ***Qatar Airways vs. Shapoorji Pallonji & Co.***[3] submitted that even if the entity is owned 100% by the State, the Corporate entity has a distinct juristic personality, and that the personality is distinct from those who own the share capital. The principle that a corporate entity incorporated under legislation has its own juristic persona is a well recognized principle. The trading activity carried out by the Corporation is not a trading activity carried out by the State departmentally, nor it is a trading activity carried on by a State through its agents appointed in that behalf.

There can be no quarrel on this submission of Mr. Kamat, but the fact is, right through it is the IRI and not RAI as an independent entity that has filed the Application or Appeal. If we have to apply the principle that a

3 *2013 (3) Mh.L.J. 323*

corporate entity has distinct and separate personality as submitted by Mr. Kamat, we do not have find merit in grounds (s), (v) and (w) as quoted above. Such an independent entity cannot claim sovereign immunity.

18. Applicant has taken the position belatedly and as an after thought that, it is the Islamic Republic of Iran Railways (IRIR) that is participating in these proceedings and not the Iranian Government. This is contrary to its stated position before this Court in Commercial Chamber Summons No. 523 of 2019. The fact that it was the Iranian Government participating at the hearing of Chamber Summons No. 523 of 2019 in Commercial Execution Application is evident from the order of the learned Single Judge, namely paragraph 3 and 8 of the Order dated 22nd January, 2020 calling upon Applicant to disclose its assets. The tenor and the position taken by Applicant in the Appeal, in particular the grounds (s), (v) and (w) along with this Interim Application and another Interim Application No. 1627 of 2020 which have been filed by Applicant, is in its capacity as a foreign State, i.e., Iranian Government. Applicant's defence that it was infact IRI or RAI was not canvassed in the Appeal and is a new position being taken through the additional affidavit-in-support. Even the Interim Application No.1628 of 2020 filed by Applicant is in the capacity of a foreign State. The Application which has been signed through one Mohammed Reza Ebrahimi, the authorized representative of Iran, as could be seen grounds 4(c), 4(d), 4(e), 4(f), 4(t) and paragraph 7, indicates that it is foreign State and not IRIR or RAI that has filed the application.

19. Even when the three Interim Applications along with Appeal were filed after the Court directed Applicant to disclose its assets under the disclosure order, Applicant elected not to produce the additional documents like the Establishment Act and Articles of Association that it has produced now with the additional affidavit. There has been a delay of more than three years for production of these documents and no explanation has been provided for the change in stance of Applicant. In our view attempts by Applicant to distinguish IRIR or RAI from itself is nothing but an eye wash. The request made by Respondent No.1 vide its letter dated 28th December, 1986 to the Ministry of External Affairs was for permission to sue State of Iran on the basis that there was no separation between Iran Government and Iranian Railways. Applicant has with respect to implication of RAI/IRIR has not explained the delay in making these belated arguments even though it had knowledge of proceedings before this Court in July 2019. In fact, Applicant originally canvassed the arguments while participating in Chamber Summons No. 523 of 2019 as Iranian Government instead of IRIR or RAI. The term Iranian Government and IRIR/RAI, in our view are being mischievously and interchangeably used with an attempt to mislead this Court. The letter dated 26th September, 2018 issued by Union of India clearly recognizes that IRIR is a part of Iran Government and allows execution of the judgment and decree. The consent of the Union of India for institution of the suit was placed before the Court and considering the evidence on record, the Court recognized that the suit has been properly

filed against Iranian Government. After having participated and having admitted knowledge of proceedings since March/July 2019, and having actively participated in the proceedings before the Court in Chamber Summons No. 523 of 2019, Applicant can not raise belated argument of service not being adequately made. There is no explanation provided for the delay in producing the documentary evidence or separation of legal entity between the Iranian Government and Iranian Railway. In our view, it was the responsibility of the Iranian Government against whom the cause of action arose, and against whom the judgment and decree was passed, to inform Respondent No.1 the purported predecessor in interest or successor in interest. No such information has been provided.

20. We observe that the Iranian Government has chosen not to appear before this Court and still refuses to comply with Court's orders. Thus, on one hand Applicant has stated in pleadings in connected matters that IRIR had participated in proceedings before this Court that resulted in passing of the disclosure order and on the other hand it submits that the disclosure order was directed against Iranian Government. Applicant in its Interim Application No. 1628 of 2020 had admitted to signing agreement with Government of India for supply of Railway wagons and equipment which is also supported by news publication. Applicant has not made any submissions before this Court, but only RAI which is not even a party to the Appeal has engaged a Counsel to appear. On this ground itself the Appeal along with Interim Applications ought to be dismissed for non-prosecution.

21. On the issue of non disclosure of the exclusive jurisdiction clause raised by Mr. Kamat, in our view, every pleading should contain and contain only the statement in concise form of the material facts on which the party relies for his claim of defence, as the case may be as per the law of pleadings under Order VI Rule 2 of C.P.C. Thus the facts on which a plaintiff relies to prove his case have to be pleaded by him. Similarly, it is for Defendant to plead the material facts on which his defence stands. As held by the Apex Court in ***Mayar (H.K.) Ltd. And Others vs. Owners and Parties, Vessel M.V. Fortune Express and others***[4], relied upon by Mr. Jagtiani, the expression material fact has not been defined any where, but from the wordings of Order VI Rule 2 of CPC the material facts would be upon which the party relies for his claim for defence. The material facts are facts upon which a Plaintiff's cause of action or Defendant's defence depends and the facts which must be proved in order to establish Plaintiff's right to the relief claimed in the plaint or Defendant's defence in the written statement. Which particular fact is a material fact and is required to be pleaded by a party would depend on the facts and circumstances of each case. For the purpose of cause of action it was not necessary for Respondent No.1 to plead ouster of jurisdiction of this Court. Respondent No.1 had obtained leave under clause 12 of the Letters Patent and on leave being granted has instituted this Suit. The Court was satisfied and as noted earlier also granted leave to serve the Iranian Consulate in Mumbai and the Embassy in New

4 (2006) 3 SCC 100

Delhi. The Court also granted an ex-parte decree. In our view, Applicant should have come forth and informed the Court that there was an exclusion clause. The absence of reference to the exclusive jurisdiction clause in the pleadings, in the facts and circumstances of this case, cannot be said to be suppression of material facts.

22. Considering the above observations made by us, the Interim Application is not sustainable. There is no satisfactory explanation for the delay of 12 years and 10 days. Hence the Application is dismissed with costs in the sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to be paid within 4 weeks to Respondent No.1. Payment to be made through Advocate for Respondent No.1.

23 Consequently, the Appeal also is dismissed.

(RAJESH S. PATIL, J.) (K.R. SHRIRAM, J.)

P.P. SALGAONKAR