

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Compensation Application No.150 of 1999**

**In the matter of:**

**Wasan Exports Pvt. Ltd.**

**...Applicant**

**Vs.**

**Canara Bank & Ors.**

**...Respondents**

**Appearance:** Ms. Mansi Sood, Advocate with Mr. Jitender Wasan for the Applicant.

Mr. Rajesh Kumar Gautam and Ms. Khushboo Aggarwal, Advocates for Respondent No.1.

Mr. Mahesh Kasana and Ms. Aparna Rohatgi Jain, Advocates for Respondent No.2.

**06.09.2019**

Today, the case is listed for disposal of the application filed by Respondent No.1. under Section 151 of the Code of Civil Procedure, 1908 seeking recall of order dated 22.08.2019 and also to allow the evidence of second witness of Respondent No.1, RW-1(2) along with affidavit in support thereof. The Applicant has also filed its objections to the abovesaid application.

2. The relevant paragraphs of the application filed by Respondent No.1. are reproduced below: -

“4. That the cross-examination of the first witness of Respondent No.1., i.e., RW-1, was concluded on 22.08.2019. The Counsel for the Respondent No.1, on 22.08.2019, consented to conclusion of evidence of Respondent No.1. The matter was registered by Ld. Registrar on 26.08.2019 for cross-examination of witness of Respondent No.2.

5. That this Hon’ble Tribunal, vide its Order dated 22.05.2019 directed Respondent No.1 to produce all documents available with them relating to Letter of Credit No.1588/ESCLC/199/96 dated 19.08.1996. In compliance of the Order dated 22.05.2019, Respondent No.1 produced all the documents available with it relating to the said Letter of Credit. It is pertinent to mention here that the documents filed in compliance of Order dated 22.05.2019 contain

*certain facts, which are crucial for the adjudication of the present case. It is, therefore, necessary in the interest of justice that the Order dated 22.08.2019 passed by the Ld. Registrar in Compensation Application No.150 of 1999 be recalled and Respondent No.1 be permitted to lead evidence on the facts and documents that have recently come in light and are crucial for the proper adjudication of the present dispute.*

6. *That the Respondent No.1 seeks to lead evidence of another witness on behalf of Respondent No.1, placing reliance on documents which are necessary for adjudication of the present matter.*
7. *That the present Application is being made bona fide and in the interest of justice. The present Application, if not allowed by this Hon'ble Tribunal, would result in great miscarriage of justice and gravely prejudice the case of Respondent No.1. However, no prejudice shall be caused to other parties if the same is allowed.”*

3. Applicant in its objections to the abovesaid application in the relevant paragraphs stated as below: -

- “2. *That the present application has been preferred by the Respondent No.1. herein seeking recall of the order dated 22.08.2019 passed by this Hon'ble Court, whereby the RW-1, being the witness of Respondent No.1 was discharged after cross-examination, and the evidence of Respondent No.1 was closed by consent of the counsel of Respondent No.1.*
3. *That by way of the present application, the Respondent No.1 has sought recall of the order dated 22.08.2019 on the ground that the documents filed by the Respondent No.1 pursuant to the order dated 22.05.2019 contain certain crucial facts, which are relevant for the adjudication of the present case and that they wish to lead evidence on the facts and documents that have recently come to light.*
4. *In response thereto, it is submitted that there is no question whatsoever of any facts and/or documents having “recently*

come in light” in so far as the instant Compensation Application was filed in 1999 and therefore, no new facts or documents could have been discovered regarding the same, unless the Respondent No.1 has been deliberately or negligently suppressing the same for the last 20 years. In fact, in the Reply dated 25.04.2019, filed by the Respondent No.1 to the Applicant’s application seeking summoning of witness to produce documents, the Respondent No.1 had itself stated that it was only able to locate one file consisting of photocopies of few documents pertaining to the Letter of Credit No.1588/ESCLC/199/96 dated 19.08.1996, along with the files pertaining to the court record, and copies of the said file that it located were subsequently produced before this Hon’ble Tribunal. As such, the documents in the said file, which the Respondent No.1 claims contain certain facts crucial for the adjudication of the present case, are already before this Hon’ble Tribunal and therefore, there can be no question of leading further evidence on this account.

5. It is further submitted that the present application filed by the Respondent No.1 is completely vague and does not specify any of the details regarding the fresh evidence which is sought to be led – the nature or contents of the documents or facts which have recently come to light, the reason for not placing them before this Hon’ble Tribunal despite ample opportunities having been given earlier, the details of the new witness whose evidence is sought to be led or the documents which are sought to be relied on in the evidence of this new witness. As such, the Respondent No.1 has completely failed to demonstrate that the present application is not merely a tactic to re-open its evidence and take undue advantage of the same by making vague and bald averments.
6. Therefore, it is submitted that the present application filed by the Respondent ought not to be allowed by this Hon’ble Tribunal on any of the grounds contained therein as the same is vague and lacks all material particulars. It is

*submitted that the filing of the present application is nothing but a delaying tactic and ought not to be countenanced by this Hon'ble Tribunal. It is submitted that the Applicant would suffer grave prejudice if the present application were to be allowed and the same ought to be dismissed in the interest of justice."*

4. Learned Counsel for Respondent No.1 states that he wants to produce only one other witness namely - Shri Sanjeev Bansal, Manager at Overseas Branch of Respondent No.1.

5. Learned Counsel for Respondent No.2 states that he has no objection, if the application of Respondent No.1 is allowed.

6. Heard learned Counsel for the parties and perused the material available on record. It would be in the interest of justice to give due opportunity to Respondent No.1 to give evidence of Shri Sanjeev Bansal, Manager at Overseas Branch of Respondent No.1. Accordingly, the application filed by Respondent No.1 is disposed of.

7. List the case for cross-examination of Respondent No.1 witness on 20.09.2019

**(Peeush Pandey)**  
**Registrar**