

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1819 OF 2013

Newreka Chemicals Pvt. Ltd.	..	Petitioner
VS.		
M/s. Yaashitech Enterprises & Ors.	..	Respondents

Mr. Rajesh S. Datar for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

- 1] Rule. On 26 February 2013, it was made clear that this writ petition may be disposed of finally at the stage of admission.
- 2] This petition challenges order dated 28 January 2013 by which the II Jt. Civil Judge, Senior Division, Kalyan, has declined to set aside the order dated 26 July 2012, closing the petitioners (plaintiffs) evidence.
- 3] The impugned order notes that the affidavit in lieu of examination in chief was filed by the petitioners / plaintiffs on 3 December 2010 and the matter was listed about 25 to 30 times thereafter, but the matter could not proceed for reasons attributable to the petitioners. On such basis, the learned Civil Judge made an

order on 26 July 2012 closing the evidence of the petitioners and further by the impugned order dated 28 January 2013 has declined to recall the same.

4] Mr. Datar, the learned counsel for the petitioners submitted that in the interregnum between 3 December 2010 i.e. the date on which the affidavit in lieu of examination in chief was filed and the date when the order closing the evidence was made i.e. on 26 July 2012, one of the partners of the respondent expired and considerable time was spent in bringing his heirs on record. In such circumstances, Mr. Datar contended that the petitioner could not have been held responsible for the delay, if any, and the order closing the evidence was harsh and uncalled for in the facts and circumstances of the case.

5] Having heard the learned counsel for the petitioner and perused the record, though it appears that the petitioner was not vigilant enough to pursue the matter, the order closing the evidence does appear to be harsh in the facts and circumstances of the case. In this case, the affidavit in lieu of examination-in-chief was filed on 3 December 2010. Thereafter, the petitioner applied for production of certain additional documents. On such basis, the cross-examination could not proceed. Expiry of one of the partners of the

respondent was reported on 2 August 23011. Thereafter application for bringing his heirs on record was made on 5 November 2011. Ultimately on 31 January 2012, the plaint was amended so as to bring on record the heirs of the deceased partner. Permission for filing of written statement was granted on 15 February 2012. Ultimately, however the order for closing the evidence was made on 26 July 2012.

6] In the aforesaid circumstances, it would be appropriate if the impugned order dated 28 January 2013 is set aside, subject to the petitioner paying costs of Rs.10,000/- in favour of the respondents. Such costs to be deposited in the trial court within a period of four weeks from today. Upon deposit of the costs, the respondents be allowed to withdraw the same unconditionally.

7] Order dated 26 July 2012 closing the petitioners evidence is also set aside. The petitioner shall accordingly be entitled to lead its evidence on the basis of affidavit in lieu of examination-in-chief which is already on record.

8] Representative of the petitioner to appear before the learned trial Court on 28 April 2015 at 11.00 a.m. and produce an authenticated copy of this order.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka