

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2875 OF 2016

The State Bank of India

Petitioner

Vs

The Hindustan Construction
Co.Ltd

.. Respondent

Mr. Nirav Shah a/w Ms Audrey Cardozo i/b Little & Co, Advocates
for Petitioner.

Mr. Karl Tamboly a/w Ms Vrushali Kabare and Nishita D'Souza i/b
Harish Joshi & Co, Advocates for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 10/03/2016

PC:

1. Heard Mr.Nirav Shah, learned counsel for the petitioner and Mr. Karl Tamboli, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 3.2.2016 passed by the learned Judge, presiding over Court Room No.27, of the City Civil Court at Greater Bombay in Notice of Motion No. 4048 of 2015 in Summary Suit No.9937 of 1990 (High Court Summary Suit No.2193 of 1990). By that order, the learned trial Judge dismissed the Notice of Motion taken out by the petitioner, hereinafter referred to as 'defendant', for setting aside order dated 28.9.2015 by which the evidence of the defendant was closed.

3. Mr. Shah submitted that that on 19.8.2015 the respondent, hereinafter referred to as 'plaintiff' closed its evidence. The matter was adjourned to 14.9.2015 for defendant's evidence. On 14.9.2015 on the oral request made by defendant, it appears that as and by way of last chance, it was adjourned to 28.9.2015 for filing affidavit of evidence. On 28.9.2015, nobody was present on behalf of the defendant. The learned trial Judge closed the defendant's evidence. He submitted that by closing evidence of the defendant, it will cause great prejudice to the defendant. He, therefore, submitted that the affidavit of evidence of the defendant duly affirmed on 13.10.2015 is ready and the defendant may be permitted to file that affidavit of evidence on record. He further submitted that the defendant does not want to examine any other witness. He further assures that the defendant will extend full cooperation for recording evidence of the defendant.

4. On the other hand, Mr. Tamboly submitted that only reason given in the affidavit in support of Motion for setting aside the impugned order is that the defendant has a good case on merits and has every chance of success in the suit. In short, he submitted that no reason was given by the defendant for setting aside the order dated 28.9.2015.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused

the material on record. As is evident from the record, the plaintiff's evidence was over on 19.8.2015. The matter was adjourned to 14.9.2015 for defendant's evidence. It appears that on 14.9.2015, oral request was made for adjournment and as and by way of last chance, it was adjourned to 28.9.2015 for filing affidavit of evidence by the defendant. On 28.9.2015, neither the defendant's Advocate nor representative of the defendant remained present with the result the learned trial Judge passed order closing the evidence of the defendant.

6. Mr. Shah states that the defendant wants to examine only Rajiv Ranjan, Officer of the defendant as its witness and no other witness. Statement is accepted. Affidavit of evidence of said Mr. Ranjan is duly affirmed on 13.10.2015. In view thereof, in my opinion, it is necessary to give opportunity to the defendant to lead evidence subject to extending full co-operation for recording of its evidence as also payment of costs of Rs.15,000/- to be paid to the plaintiff or deposited in the trial Court on or before 14.3.2016, which is the next date in the trial Court.. Hence, the following order.

(i) The impugned order is set aside subject to the defendant paying costs of Rs.15,000/- to the plaintiff or depositing the costs in the trial Court on or before 14.3.2016. If the amount is deposited, the plaintiff is permitted to withdraw the amount unconditionally.

(ii) Affidavit of evidence of Mr. Rajiv Ranjan affirmed on 13.10.2015 shall be taken on record. The plaintiff is at liberty to cross examine the defendant's witness.

(iii) Rule is made absolute in the aforesaid terms.

(R.G.KETKAR, J.)