

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 WRIT PETITION NO. 4832 OF 2017

THE MAHARASHTRA ELECTRICITY DISTRIBUTION COMPANY
LIMITED
VERSUS
BANK OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Godsay Satish M.
Advocate for Respondent No.1 : Mr. Milind Patil
Advocate for Respondent Nos. 6, 7-1 to 7-4 :
Mr. C. R. Deshpande
Advocate for Respondent No.8 : Mr. R. B. Temak

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CORAM : V. K. JADHAV, J.
DATED : 06th MARCH, 2018

PER COURT:-

1. Though the respondents/original defendants have strongly resisted the prayer made in this Writ Petition, the Writ Petition is allowed in terms of prayer clause (B) only.
2. The petitioner/original plaintiff filed an application for examination of the Superintending Engineer as witness and since the said witness could not remain present on the date as fixed by the trial court for hearing due to his health problems, the trial court passed the order of closure of evidence and when the

petitioner/original plaintiff filed an application Exhibit 160 for recalling the said order and for examination of the said witness, by the impugned order dated 06.03.2017, the trial court has rejected the same.

3. It appears that examination of the said witness is necessary for the petitioner/plaintiff to substantiate its case. It is also a part of the record that the said witness could not remain present before the trial court due to his health problems. Though there is some delay in filing the application for recalling the order of closure of evidence, the petitioner can be saddled with costs for its inaction in that regard. Hence the following order.

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The impugned order dated 06.03.2017 below Exhibit 160 in Special Civil Suit No. 130 of 2009 passed by the Joint Civil Judge, Senior Division, Dhule, is hereby quashed and set aside.
- III. The application Exhibit 160 is hereby allowed in terms of its prayer clauses subject to costs of Rs.9,000/- (Rupees Nine Thousand only) to be

deposited by the petitioner/original plaintiff before the trial court within a period of two weeks from today and if the said costs amount is deposited, the same shall be paid to the defendants equally.

IV. On deposit of costs, the petitioner/original plaintiff may be permitted to examine the witness as named in the application Exhibit 160.

V. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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