

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL IP SUIT NO.22 OF 2008
WITH
COMMERCIAL NOTICE OF MOTION NO.1823 OF 2019
WITH
CONTEMPT PETITION NO.60 OF 2011
WITH
NOTICE OF MOTION NO.4169 OF 2008
WITH
COMMERCIAL NOTICE OF MOTION NO.310 OF 2017
IN
COMMERCIAL IP SUIT NO.22 OF 2008**

Sai Ram Infosys Network Pvt. Ltd. & Anr.Plaintiffs

Vs.

Maharashtra State Electricity Distribution Co. Ltd.Defendant

Dr. Birendra Saraf a/w. Mr. Rohan Sawant, Mr. Vinod Bhagat and Ms. Ruchi Agarwal i/b. G.S. Hegde and V.A. Bhagat for plaintiffs.

Ms. Prerna Gandhi for defendant/applicant in NMCD/1823/2019.

**CORAM : K.R.SHRIRAM, J.
DATE : 29th AUGUST 2019**

P.C.:

COMMERCIAL NOTICE OF MOTION NO.1823 OF 2019

1 On 4th June 2019 the Court had closed the evidence of defendant. This was because (a) nobody appeared for defendant and (b) defendant had been directed to file evidence within two weeks as per the order dated 5th June 2017 and defendant had not filed any evidence. Against this order, an appeal was preferred and the appeal came to be dismissed with liberty to approach this Court for recalling the said order. Defendant has filed a commercial notice of motion no.1823 of 2019 seeking

recall of the order dated 4th June 2019 and for other reliefs. I am inclined to consider only recall of order dated 4th June 2019 only to the extent of closing defendant's evidence.

2 At the outset, I have to note that affidavit in support has no explanation whatsoever as to why between 5th June 2017 and 4th June 2019 defendant did not file any evidence. Defendant is accusing its earlier advocate for having taken a discharge in the matter without intimating defendant. The counsel for defendant confesses that defendant has not bothered to check in the records of the registry as to when the earlier advocates were given discharge. Moreover, the counsel for defendant also agrees that there are law officers in defendant's organization and they ought to have kept track of the court proceedings. Therefore, there is no explanation worth considering.

3 At the same time, Dr. Saraf states that if the Court is inclined to consider applicant's request to recall the order of 4th June 2019 and defendant is going to be allowed to lead evidence, then (a) cost should be imposed and (b) plaintiff should be allowed to lead further evidence. Ms. Gandhi appearing for defendant has no objection but prays that the cost imposed be reasonable keeping in mind that defendant is a Maharashtra State entity.

4 Considering the over all situation, purely by way of indulgence, the order dated 4th June 2019 is recalled. Plaintiff is also permitted to lead further evidence, if required. Defendant shall also pay a sum of Rs.2 lakhs as costs and this amount shall be paid by way of cheque drawn in favour of advocate on record for plaintiff within two weeks from today.

5 It is made clear that if this amount is not so paid, this order recalling the order dated 4th June 2019 will stand recalled without further reference to this Court. If this amount is paid, defendant will be entitled to lead evidence after plaintiffs' evidence is closed.

6 Notice of motion accordingly stands disposed.

7 Dr. Saraf states that within two weeks from today plaintiffs will file further evidence of a witness to prove damages and serve a copy thereof upon defendant.

8 Stand over to 13th September 2019 for directions.

(K.R. SHRIRAM, J.)