

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 2169 OF 2018
IN
COMM. SUIT NO. 2 OF 1996**

Oil and Natural Gas Corporation Ltd.	...Applicant
In the matter between	
Oil and Natural Gas Corporation Ltd.	...Plaintiff
Versus	
Urmila and Co. Pvt. Ltd.	...Defendant

Mr. Aliabbas Delhiwala, a/w Usha Singh & U. Baria, i/b Vyas
& Bhawal, for the Plaintiff.
Mr. Jaydeep Raut, a/w Manik Joshi & Mantal Bajpai, i/b
Crawford Bayley & Co., for the Defendant.

**CORAM: N. J. JAMADAR, J.
DATED : 4th NOVEMBER, 2019**

PC:-

1. This Notice of Motion is taken out by the plaintiff with a prayer to review and recall the order of closing the evidence of the plaintiff, passed by this Court on 27th September, 2018.
2. At the outset, Mr. Delhiwala, the learned Counsel for the plaintiff submits that the plaintiff does not press the prayer of review and restricts the motion for recalling the order of closing the evidence of the plaintiff.
3. This Court by order dated 31st August, 2018, had posted the matter on 27th September, 2018, for marking of documents/recording of evidence with a specific direction that

the plaintiff's first witness shall remain present in the Court on 27th September, 2018. However, on 27th September, 2018, when the matter was called out, the plaintiff's witness, whose examination-in-chief was tendered before the Court, was absent. It was then submitted that the said witness remained absent as he had to attend to some urgent work on that day. This Court thus directed that the plaintiff's evidence stood closed. The Court further directed that the defendant to file fresh list of witnesses, on affidavit in lieu of examination-in-chief together with compilation of documents.

4. The plaintiff has, thus, taken out this Notice of Motion to recall the said order dated 27th September, 2018.

5. It is submitted on behalf the plaintiff that the plaintiff's witness was prevented by a genuine and sufficient cause from attending the Court on 27th September, 2018 and the plaintiff would suffer serious prejudice in the event the plaintiff is not permitted to lead evidence to substantiate his claim.

6. The defendant has resisted the prayer by filing Affidavit-in-reply. The ground mentioned in the Notice of Motion for recalling the order is stated to be contrary to the submission made before the Court on 27th September, 2018. An endeavour was made to demonstrate that the plaintiff has been guilty of

protracting the trial of the suit on one or the other pretext, and, taking into account the totality of the conduct of the plaintiff, this Court had closed the plaintiff's evidence. The plaintiff, therefore, does not deserve the relief as claimed.

7. Mr. Raut, the learned Counsel for the defendant took the Court through the orders passed by this Court on 19th December, 2014, 14th November, 2017 and 31st August, 2018, to bolster up the submission that the plaintiff has been remiss and negligent in prosecuting the suit.

8. The material on record may indicate some amount of laxity on the part of the plaintiff in prosecuting the suit. However, on the perusal of the order dated 27th September, 2018, the sole reason for closing the evidence of the plaintiff appears to be the absence of the plaintiff's witness for marking of the documents on that date.

9. It is trite that the Courts are expected to lean in favour of the adjudication of the dispute on merits. Thus, in order to advance the cause of justice and provide an efficacious opportunity for the plaintiff to lead evidence in support of the suit claim, in my considered opinion, the order dated 27th September, 2018, closing the evidence of the plaintiff, deserves to be recalled.

10. Mr. Raut, the learned Counsel for the defendant submitted that the defendant has suffered costs and prejudice in putting the efforts to prepare the Affidavit in lieu of examination-in-chief on the assumption that the plaintiff's evidence has been closed. The inconvenience and prejudice caused to the defendant is not such that it cannot be compensated by way of costs. Hence, the following order:

- (i) The Notice of Motion No. 2169 of 2018 stands allowed.
- (ii) The order dated 27th September, 2018, closing the plaintiff's evidence, stands set aside, subject to costs of Rs.2,000/-, to be paid by the plaintiff to the defendant, within three weeks from today.

[N. J. JAMADAR, J.]