

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1 OF 2020
IN
SUIT NO. 1799 OF 1997

Board of Trustees of the Port of Mumbai	...Applicant
In the matter between	
Reliance Industrial Infrastructure Ltd.	...Plaintiff
Versus	
Board of Trustees of the Port of Mumbai & ors.	...Defendants

Ms. Snehal Paranjape, a/w Melanie D'souza, & Gaurav
Thakur, i/b A. S. Dayal & Associates, for the Plaintiff.
Mr. Vishal Talsania, a/w Ms. Lakshmi Bussa, i/b M. V. Kini &
Co., for the Defendants.

CORAM: N. J. JAMADAR, J.
DATED : 20th FEBRUARY, 2020

PC:-

1. This application is filed by the defendant – applicant to the counter-claim to recall the order dated 3rd December, 2019, whereby the evidence of the defendants was closed in the suit as well as in the counter-claim and the parties were directed to compile the record for hearing and final disposal.
2. This Court had noted in the order dated 3rd December, 2019 that by an order dated 26th October, 2018, defendant no.1 was permitted to file affidavit of DW-1 Sunil Kumar qua the

assertions in the counterclaim and serve copy thereof on the otherside. The witness was further directed to remain present before the Court on 30th November, 2018. The defendants had not led evidence despite more than a year having elapsed from the date of the said order. Hence, the evidence of the defendants was closed.

3. In the application, it is averred that defendant no.1 could not lead evidence in respect of the counter-claim as certain documents could not be traced and the learned Advocate, who was entrusted with the matter did not diligently deal with the suit and counter-claim and misplaced the documents. An affidavit-in-reply is filed on behalf of the plaintiff.

4. The application is resisted. It is pointed out that despite ample opportunity, the defendants have not led evidence. The reasons sought to be assigned in the application are not *bona fide*. There is no justifiable reason to recall the order. Hence, the application be rejected.

5. Heard the learned Counsels for the parties.

6. Ms. Paranjape, the learned Counsel for the plaintiff has taken me through the events which have transpired during the pendency of the suit to underscore the negligence and default on the part of the defendants. It was submitted that the

application does not make a true disclosure of the facts. The defendants have yet not disclosed as to whether the defendants have located the documents which they seek to rely upon, nor the affidavit of evidence is ready.

7. It is true that there is considerable delay on the part of the defendants in taking steps to lead evidence in conformity with the order passed by this Court on 26th October, 2018. The assertion in the application that the defendants were under an impression that since there was no time-limit prescribed for filing affidavit of evidence, there would be no default, cannot be countenanced. However, in order to advance the cause of substantial justice some inadvertence and indolence on the part of the defendants is required to be condoned. The defendants have led evidence in the suit. For an effectual and complete adjudication of the dispute between the parties, it would be necessary to provide an opportunity to the defendants to lead evidence in the context of counter-claim as well. Foreclosing the opportunity to lead evidence would serve no purpose. The inconvenience caused to the plaintiff can be compensated by awarding costs and putting the defendants to terms so as to ensure expeditious completion of the trial.

8. Hence, the following order.

: Order :

- (i) The application stands allowed subject to payment of costs of Rs.25,000/- by the defendants to the plaintiff within two weeks from today.
- (ii) The defendants shall file the affidavit of Mr. Sunil Kumar – DW-1 in proof of the counter-claim and serve its copy on the plaintiff within two weeks.
- (iii) DW-1 shall remain present before the Court for recording further evidence and marking of documents which may be filed by the defendants along with the affidavit in lieu of examination-in-chief of DW-1.
- (iv) It is hereby made clear that in the event the defendants commit default in filing the affidavit within the said period, the Court would be constrained to proceed with the final hearing of the suit.

9. The interim application stands disposed of.

10. List the suit on 12th March, 2020.

[N. J. JAMADAR, J.]