

Amberkar

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

**WRIT PETITION NO. 2520 OF 2024**

M/s. Eastern Steel Industries & Ors.

.. Petitioners

**Versus**

Kabbinhitalu Subaraya Prabhu & Anr.

.. Respondents

.....

- Mr. Bhavin Doshi a/w Mr. Vaibhav Gaikwad i/by V & M Legal for  
Petitioners

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : AUGUST 20, 2024**

**P. C.:**

1. Mentioned at the time of rising. Matter is on board at Sr. No. 49.
2. Heard Mr. Doshi a/w Mr. Gaikwad, learned Advocate for  
Petitioners.
3. Present Writ Petition takes exception to the order dated  
27.09.2023 passed by the learned Trial Court while dismissing Notice  
of Motion No. 3507 of 2023 filed by Defendants (Petitioners herein).  
It is the case of Defendants that by virtue of the said Notice of Motion,  
they approached the Trial Court seeking leave of the Court to permit  
them to lead evidence of Defendant No. 2 which was directed to be  
closed by the Trial Court in certain circumstances attributable to the  
dereliction of the Defendants. Learned Trial Court while dealing with  
the plea of Defendants referred to a previous order dated 20.04.2023  
passed by the Court by which the learned Trial Court had closed the

evidence of the Defendants. Learned Trial Court opined and held in the impugned order that when the Defendants filed the Notice of Motion they did not pray for setting aside of the previous order of closure of their evidence dated 20.04.2023, but instead have directly filed the Notice of Motion No. 3507 of 2023 seeking leave of the Court to permit them to lead evidence. According to the Trial Court the closure of evidence order was subsisting and unless it was set aside, the plea in the Motion was not maintainable. Record and pleadings show that the Suit was in fact fixed on 20.04.2023 for evidence of Defendant No.2 when the contentious order of closure of evidence was passed by the Trial Court.

**4.** It is contended by Mr. Doshi that on 20.04.2023 due to ill-health of Defendant No. 2, he could not file his affidavit of examination-in-chief and resultantly it led to the passing of the order dated 20.04.2023. Mr. Doshi would submit that Defendant No. 2 was indisposed on that date but the learned Trial Court has held that medical certificate relating to his illness was also not filed on record nor costs of Rs. 1000/- which was awarded against Defendants previously by order dated 09.12.2022 was not paid by Defendants. Mr. Doshi would submit that in that view of the matter order dated 20.04.2023 came to be passed.

5. At the outset, Mr. Doshi would inform the Court that in so far as the compliance with the order dated 09.12.2022 and levy of costs as directed in that order is concerned, Defendants shall abide by the same. All that he would contend is that the Defendants be given an opportunity to lead their evidence so that their defence is not ousted.

6. The submissions made by Mr. Doshi appeal to the Court since if Defendants are not given an opportunity, it would virtually non-suit their case before the learned Trial Court and in that event Plaintiffs may get a complete walk over. However, this does not mean that Defendants' dereliction and neglecting of the Court's order can be overlooked by this Court. Orders passed by the Courts are required to be complied with. What I see is that Defendants have protracted the trial. Order dated 09.12.2022 was not even complied with by them. Further order dated 20.04.2023 is not even challenged nor attempted to be set aside and directly Notice of Motion has been filed for seeking to lead evidence. Defendants have been ill-advised by their Advocates and resultantly the trial is delayed due to such actions. However, as observed, if Defendants do not get a chance to lead evidence, their defence will get ousted. Hence to balance convenience an appropriate order / directions need to be passed. Setting aside of the order dated 27.09.2023 and permitting Defendants to lead evidence cannot be unconditional. Equally, it is seen that even in this Petition Defendants

have not prayed for setting aside of the order dated 20.04.2023. Further in order to save time and not prolong the trial, Defendants cannot be relegated back to the Trial Court for making a fresh application for setting aside of this order since it will delay the Suit proceedings.

7. Hence, under the power of superintendence exercised by this Court under Article 227 of the Constitution of India and in the interest of justice, the following order / directions are passed:-

- (i) Impugned order dated 27.09.2023 passed by the Trial Court rejecting Notice of Motion No. 3507 of 2023 is quashed and set aside;
- (ii) Order dated 20.04.2023 of closure of the evidence of Defendants is also quashed and set aside;
- (iii) Defendants - Petitioners shall pay costs of Rs. 5,000/- (including the costs of Rs. 1,000/- as directed by the order dated 09.12.2022) for their dereliction and as a condition precedent for passing of this order to the Plaintiff;
- (iv) These costs of Rs. 5,000/- shall be paid by Defendants to Plaintiff within one week from today. Subject to the payment of the aforesaid costs and placing the receipt of

payment before the Trial Court, Defendants shall be permitted to file the affidavit in lieu of examination-in-chief of the Defendant's witness by the Trial Court.

8. Considering that the Suit is of the year 2007, the matter cannot be protracted. Hence, it is directed that all steps taken by the Defendants for witness action will have to be completed as expeditiously as possible. In this regard, learned Trial Court is therefore directed to decide Suit No. 4809 of 2007 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournments unless it is absolutely necessary in case of any urgency or emergency.

9. All contentions of the parties are expressly kept open.

10. This Court has not opined on any of the merits of the matter and the Suit shall be decided on its own merits in accordance with law.

11. With the above directions, Writ Petition is allowed and disposed.

[ MILIND N. JADHAV, J. ]

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by RAVINDRA  
MOHAN  
AMBERKAR  
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