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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9703 OF 2014

1. Shakuntala Dattu Tade,
Age: 79 years, Occu: Household,
2. Shashikant Dattu Tade,
Age: 57 years, Occu: Business
3. Kalidas Dattu Tade,
Age: 49 years, Occu: Business

(Petitioner Nos. 1 to 3 all
R/o Khatik Galli, Near S. T. Stand,
Shrigonda, Dist. Ahmednagar)
4. Sau Vijaya Ratnakar Palange,
Age: 52 years, Occu: Household,
R/o A/P Indapur, Dist. Pune
5. Sau Chhaya Prakash Ghone,
Age: 52 years, Occu: Household,
R/o Parvati Darshan,
Near Police Chowki,
Pune 9
6. Pushpa Pandurang Kamble,
Age: 42 years, Occu: Household,
R/o Yerwada,
Pune 6

..PETITIONERS

VERSUS

Laxmibai Sakharam Tade,
Age: 72 years, Occu: Business,
R/o Bajartal, Near Ves,
Khatikgalli,
Shrigonda, Dist. Ahmednagar

..RESPONDENT

Mrs Anjali Dube(Bajpai), Advocate for petitioners;
Mr N. V. Gaware, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th November, 2015

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ORAL ORDER :

In a landlord – tenant dispute, after the matter has reached at the stage of conclusion of evidence, plaintiffs-landlords filed application Exh.115, under Order XVIII, Rule 17 of the Code of Civil Procedure for recalling of witness, which is rejected by Civil Judge Senior Division, Shrigonda, by order dated 24th April, 2014.

2. Learned Counsel appearing on behalf of the petitioners, while taking recourse to the provisions of Order XVIII, Rule 17 of the Code and also relying upon the provisions of section 165 of the Evidence Act, would urge that if the petitioners are not permitted to recall and examine the said witness, the object of filing of the suit will be frustrated. She would then urge that the defendant is not taken by surprise, if the petitioners are permitted to examine the said witness as the defendant will be at liberty to cross-examine him. According to the petitioners, they are ready and willing to abide by such conditions, if the application for recalling the witness is allowed.

3. Mr Gaware, learned Counsel appearing on behalf of the respondent, relying upon the judgment of Madras High Court, in the matter of **P. Mohan (deceased) vs. M.K. Azhagiri & ors.**, reported in **AIR 2014 MADRAS 18**, would urge that the powers under Order XVIII, Rule 17 of the Code are not required to be exercised in a routine manner, as the said provisions are exception to the general rule. He would then urge that the

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petitioners are in habit of dragging the proceedings and similar attempt was also made by them on earlier occasion. He, therefore, prayed to dismiss the petition.

4. Having bestowed my anxious thought to the submissions advanced, it is required to be noted that the foundation for evidence that is sought to be brought on record by recalling the witness is very much in existence and the respondent-tenant will not be taken by surprise in case if the opportunity is granted to the petitioners to recall the witness. Apart therefrom, it is required to be noted that the cause for moving the application is based on the admissions given by the witness of the respondent-tenant, however, non-exhibiting of the documents for the technical reason.

5. In view of above, in my opinion, it is improper to sustain the impugned order passed by the learned Trial Court. Thus, I pass following order :-

The order dated 24th April, 2014, passed by Civil Judge Senior Division, Shrigonda, below Exh.115, in Regular Civil Suit No.155 of 2007, is set aside. The application Exh.115 stands allowed, subject to payment of costs of Rs.10,000/-, to be deposited in the Trial Court, within a period of two weeks from today.

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On deposit of costs, the respondent – tenant will be at liberty
withdraw the same.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

amj