

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.6258 OF 2013**

Shri Laxman @ Moreshwar Maruti Shinde.       ]       ... Petitioner

Versus

Shri Dinesh Gajanan Bhise.                               ]       ... Respondent

Mr. Sagar Joshi for Petitioner.  
Mr. Jaydeep Deo for Respondent.

**CORAM :- M. S. SONAK, J.**  
**DATE    :- AUGUST 12, 2015**

**P. C. :-**

1.           This petition challenges order dated 11/02/2013, by which the Petitioner's application for recall of the Plaintiff and his witnesses has been rejected by the Trial Court.

2.           Mr. Sagar Joshi, learned Counsel for Petitioner, submitted that though the Plaintiff's evidence was closed on 18/09/2010, the Petitioner was granted leave to amend the Written Statement on 18/12/2011. Therefore, in the context of the amended Written Statement, it was necessary to recall the Plaintiff and his witnesses, if necessary, by resort to the provisions contained in Section 151 of the CPC. Mr. Joshi relied on the decisions of Hon'ble Apex Court in the

cases of *Vadiraj Naggappa Vernekar (Dead) Through LRs. Vs. Sharadchandra Prabhakar Gogate*<sup>1</sup> and *K. K. Velusamy Vs. N. Palanisamy*<sup>2</sup> to submit that even after the deletion of the provisions contained in Order 18 Rule 17A of the CPC, powers for recall of witness can always be exercised by Courts under Section 151 of the CPC.

3. Mr. Jaydeep Deo, learned Counsel for Respondent, submitted that the entire object for seeking recall was to protract the proceeding. The Plaintiff and his witnesses have closed their evidence on 18/09/2010. The Plaintiff and his witnesses were extensively cross-examined. The matter has been posted for evidence of the Petitioner since the year 2010 and for one reason or the other, the Petitioner is not proceeding with his evidence. This is a suit seeking eviction on the ground of *bona fide* requirement and the Petitioner is bent upon delaying the proceeding. Mr. Deo further submitted that the application seeking recall merely states that it is necessary to confront the Plaintiff and Plaintiff's witnesses with certain documents. If the list of such documents is perused, then most of them are survey records, which the Petitioner has described being public documents. For all these reasons, Mr. Deo submitted that the impugned order be not interfered with.

4. Having heard the learned Counsel for parties and perused the record, there is no reason to interfere with the impugned order.

---

1 (2009) 4 Supreme Court Cases 410

2 (2011) 11 Supreme Court Cases 275

No doubt, after the conclusion of the Plaintiff's evidence, leave had been granted to the Petitioner to amend the Written Statement on 18/12/2011. However, if the application seeking recall is perused, then the recall is not applied for in the context of amended Written Statement but rather, recall is applied for in the context of certain documents, list of which was appended to the application. If the list of documents is perused, then the documents mostly pertain to survey records and survey entries. In regard to such documents, there is absolutely no necessity to recall the Plaintiff or the Plaintiff's witnesses. The Petitioner has himself described such documents as public documents. In fact, there is no explanation as to why such documents were not obtained earlier and, indeed, if it was so vital and necessary, the Plaintiff and his witnesses were not examined on the basis of the same. That apart, even if we proceed on the basis that that was some valid reason for not obtaining documents earlier, that by itself, is absolutely no reason for recall of the Plaintiff or his witnesses, particularly since most of the documents are only survey records.

5. The Trial Court, has rightly taken a view that the purpose for recall of witnesses is not to enable the parties to fill in the lacunae. The powers for recall can be exercised to enable the Court to clarify any doubt that may have arisen during the course of examination-in-chief. No doubt, in the case of *K. K. Velusamy Vs. N. Palanisamy (supra)*, the Hon'ble Apex Court has held that even after the deletion of the provisions contained in Order 18 Rule 17 of the CPC, the Court

can always exercise powers under Section 151 of the CPC, provided proper case is made out for the exercise of the same. The Hon'ble Apex Court has, however, added a word of caution by observing that the power under Section 151 of the CPC or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite the trials. Further, the Hon'ble Apex Court has held that if application seeking recall is found to be mischievous, frivolous or to cover up negligence or lacunae, it should be rejected with heavy costs.

6. In the present case, there is no reason to interfere with the impugned order. Record indicates that since September 2010, the Petitioner has not commenced his defence evidence. The suit is instituted for recovery of possession of the suit premises on the grounds of bona fide requirement. For a period of almost 5 years, the Petitioner has not cooperated in the expeditious disposal of the suit. The application which has been rejected by the impugned order, was obviously, one of the reasons contributing to this delay.

7. Accordingly, this petition is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand Only). The costs to be deposited by the Petitioner within two weeks from today. The Trial Court to ensure that such costs are deposited. Upon deposit, the Respondent-Plaintiff shall be at liberty to withdraw the same unconditionally. Further, the Trial Court is directed to dispose of the suit as

expeditiously as possible and in any case, within a period of one year from today. The Trial Court to decide the case in accordance with law and on its own merits.

8. All concerned to act on basis of authenticated copy of this order.

**(M. S. SONAK, J.)**