

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

**WRIT PETITION NO.9157 OF 2015**

**Somnath Raghunath Dhamne** : Petitioner.  
**Versus**  
**Malegaon Welfare Trust**  
**Through its Trustees & Secretary**  
**Dr.Faizee Saeed Ahmed and ors.** : Respondents.

**ALONG WITH  
WRIT PETITION NO.9156 OF 2015**

**Kantilal Jaynarayan Jhanwar** : Petitioner.  
**Versus**  
**Malegaon Welfare Trust**  
**Through its Trustees & Secretary**  
**Dr.Faizee Saeed Ahmed and ors.** : Respondents.

**Mr. Manoj Harit i/by Manoj Harit and Company for the Petitioners in both  
the Petitions.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 02<sup>nd</sup> December 2015**

**P.C.**

1           The above Writ Petitions take exception to the identical orders both dated 12/03/2015 passed by the learned 2<sup>nd</sup> Joint Civil Judge, Junior Division, Malegaon by which orders the Applications (Exhibits 45 and 31) for recall of the Plaintiff's witness in the suits in question being Regular Civil Suit No.234 of 2009 and Regular Civil Suit No.42 of 2010 came to be allowed.

2           It appears that the instant Applications were filed after the

Plaintiff's evidence was over. The reasons given in the said Applications was that the original rent receipt book and other certified documents were not available at the time when the Plaintiff filed his affidavit of evidence and became available later thereby necessitating filing of the instant Applications (Exhibits 45 and 31) for recall of the witness to prove the said documents.

3           The said Applications were replied to on behalf of the Petitioners/Defendants in each of the above Petitions. It was sought to be contended in the reply that the Applications for recall of the witness have been filed to fill up the lacuna in the evidence of the Plaintiff's witness.

4           The Trial Court considered the said Applications and as indicated above by the impugned orders both dated 12/03/2015 has allowed the same. The gist of the reasoning of the Trial Court was that since the rent receipt book and other certified documents became available to the Plaintiff after the evidence was over, the Plaintiff has to be given an opportunity to lead further evidence by recalling the witness.

5           The impugned orders disclose that the Trial Court has referred to Order XVIII Rule 17A of the Code of Civil Procedure. In so far as the said provision is concerned, the same has stood deleted in the year 2002 and the only provision for recall of the witness is now Order XVIII Rule 17 of the Code

of Civil Procedure which recourse can be taken by the Trial Court itself and not by a party. However, it is well settled that in the absence of specific provision, recourse to Section 151 of the Code of Civil Procedure can be had so as to render justice to the parties. In the instant case, as indicated above, it is the case of the Plaintiff that the rent receipt book and other certified documents became available to the Plaintiff after the evidence was over. In my view, though recall of the witness could not have been permitted under Order XVIII Rule 17 of the Code of Civil Procedure, the same can however be permitted by taking recourse to Section 151 of the Code of Civil Procedure. It is to be borne in mind that the rules of procedure are a handmaid of justice and have to be used for furthering the cause of substantial justice rather than oppressing it. Though recall of the witness has been permitted, it is always open for the Defendant to further cross examine the said witness. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petitions are accordingly dismissed.

**[R.M.SAVANT, J]**