

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

**932 WRIT PETITION NO.6884 OF 2021**

BANSALI TRAILERS PVT LTD  
VERSUS  
MACH WHEEL ELECTRONIC SERVICES THROUGH ITS PROPRIETOR  
AND ANOTHER

...  
Advocate for Petitioner : Mr. D. G. Nagode  
Advocate for Respondent Nos.1 & 2: Mr. Avinash Barhate h/f Mr.  
S.P. Chapalgaonkar  
...

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 4<sup>th</sup> August, 2021**

**PER COURT :**

1. Heard Mr. Nagode, learned counsel for the petitioner and Advocate Mr. Avinash Barhate h/f Mr. Chapalgaonkar, learned counsel for respondents.

2. The petition challenges the order dated 06/02/2021, by the Civil Judge, Senior Division, Kopergaon/Commercial Court, passed below Exhibit-53. By virtue of Exhibit-53, dated 04/02/2020, the petitioner had sought to examine the Director of the petitioner/company, Mr. Sanjay Bansali as its witness. It is material to note, that the suit was initially

instituted as a Special Civil Suit No.8/2015, during the pendency of which, PW-1 Mr. Deshmukh, in whose favour, a power of attorney had been executed by the Company had been examined at Exhibit-21. The matter, came to be converted into a Commercial Suit, by an order dated 05/02/2020, on which date itself, the petitioner/plaintiff had submitted a list of witnesses at Exhibit-56, which included the name of Mr. Sanjay Bansali as one of the witnesses. So also an application for examining Mr. Bansali as a witness of the plaintiff, was already on record on 04/02/2020 vide Exhibit-53. It is thus apparent, that the rules and procedure as contemplated in the Code of Civil Procedure as applicable to Commercial Courts, would become applicable, only after 05/02/2020 and not earlier. Anything done earlier, could not have been considered by the Learned Commercial Court, for denying the benefit of examining the witnesses by the plaintiff. It is a settled position of law, that the plaintiff is the master of the suit and has the choice and right, to examine anyone on his behalf, in order to prove the case put-forth. In this view of the matter, when the name of Sanjay Bansali, was already included in the list of witnesses dated 05/02/2020 on which date, the suit was converted to a Commercial Suit, the Learned Commercial Court ought to have

permitted examining him. There is yet another factor which supports this, namely the order dated 26/02/2020, by which the parties to the suit, were directed to file list of witnesses and documents on or before the date fixed for case management hearing which was to be on 02/03/2020.

3. This being the position, the impugned order, cannot be sustained. The same is, therefore, quashed and set aside and application at Exhibit-53, is accordingly allowed. Writ Petition is disposed of accordingly.

**(AVINASH G. GHAROTE, J.)**