

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8086 OF 2025

Jagdish Manikrao Vedpatak and Another

VERSUS

Suresh Dhondiram Kalekar and Another

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Advocate for the Petitioner : Mr. Parag V. Barde

Advocate for Respondent : Mr. Shivprasad G. Jadhavar h/f Mr. M. D.
Gitte

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JULY 09, 2025

PER COURT :-

1. Heard learned advocates appearing for respective parties.
2. Present writ petition takes exception to order dated 01.04.2025 passed by learned Civil Judge, Senior Division, Ambejogai below Exhibit-307 in Regular Civil Suit No.53 of 2012 thereby permitting respondent to recall witnesses and record further evidence of additional witnesses.
3. The respondents instituted Regular Civil Suit No.153 of 2012 seeking declaration that impugned sale deeds are nominal, without consideration or those are fraudulent in nature. The petitioners/defendants refuted the claim of plaintiff by filing written statement. On 06.09.2013, the issues were framed. On 22.06.2017, plaintiff closed his evidence after recording evidence of six witnesses. Thereafter, when defendant started recording his evidence, the plaintiff sought to reopen his evidence. Same was permitted. On

09.02.2023, plaintiff closed his evidence. On 06.01.2025, plaintiff again filed an application for reopening of evidence, recalling of witnesses and permission to lead further evidence. The learned Trial Court allowed said application vide impugned order. Hence, this writ petition.

4. Mr. Barde, learned advocate appearing for petitioner relying upon observations of Hon'ble Supreme Court in case of **Shubhkaran Singh Vs. Abhayraj Singh and Others¹**, and also judgment of this Court in case of **Soli Sorabjee Vs. Warden and Company (India) Private Limited and Others²**, submits that although the Trial Court possess ample powers under Order XVIII Rule 17 of Civil Procedure Code to recall witness or to reopen the evidence, such powers are to be sparingly exercised. In present case, the conduct of plaintiff shows that he has time and again repeated prayers for reopening of evidence and protracting the proceeding which has caused serious prejudice to petitioners/defendants.

5. Per contra, Mr. Jadhavar, learned advocate appearing for respondent/plaintiff vehemently submits that plaintiff pleaded specific case that suit sale transactions are money lending or fraudulent in nature. Hence, it is necessary to examine the witnesses on sale deed, so also the contents of sale deed needs to be proved through necessary evidence. Although previously plaintiff has

1 2025 DGLS (SC) 677

2 2024 (5) AIR Bom R 412

examined the witnesses on sale deed, certified copy of sale deed was not available. In result, the document/sale deed is not admitted in evidence. Now, certified copy of document is filed and plaintiff wish to prove its contents by leading necessary evidence. In this background, the learned Trial Judge has rightly exercised discretion vested with it.

6. Having considered submissions advanced, it cannot be disputed that the Trial Court possess powers to reopen the evidence under Order XVIII Rule 17 of Civil Procedure Code r/w Section 151. The parameters of exercise of such jurisdiction are well settled. The powers are to be sparingly used and should not be in casual or routine manner. However, fact remains that the procedural law is handmaid of justice and powers available with Court has to be used for securing substantial justice to the parties. In present case, plaintiff's pleading clearly spells out that he seeks to make out a case by fraudulent or money lending transaction under impugned sale deeds. Apparently, photocopy of sale deed was placed on record when evidence of earlier witnesses was recorded. In result, the document is not admitted in evidence.

7. Now, plaintiff is in possession of sale deed and same is produced on record. So as to enable him to prove the contents of document, it is necessary to examine the witnesses on sale deed or recall witnesses already examined. In this background, the learned

Trial Court found it appropriate to allow plaintiff to reopen evidence and recall the witnesses already examined and also permit leading further witness as indicated in application. In this backdrop, Trial Court cannot be attributed for jurisdictional error. However, fact remains that plaintiff is not diligently prosecuting case and definitely caused prejudice to defendant. In this background, while allowing the application, the Trial Court ought to have imposed compensatory cost upon plaintiff.

8. In result, following order is passed :

ORDER

- (I) Writ Petition stands rejected.
- (II) Respondent no.1 is directed to pay compensatory cost of Rs.20,000/- to petitioners within a period of four weeks from today.
- (III) Cost to be deposited with Trial Court.
- (IV) Examination of witnesses permitted under impugned order shall be subject to condition of deposit of cost.
- (V) In case of failure to deposit the cost, the application of plaintiff shall be deemed to be rejected.

(S.G. CHAPALGAONKAR, J.)