



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1581 OF 2025

M/s Goodwill Enterprises
Through its proprietor
Manish Hridyanarayan Upadhyay,
age 36 years, occu. Business
R/o Plot No.4, Goodwill Plaza, Ring Road,
Moti Nagar, Tq. And Dist Latur.

...Petitioner

Versus

Hemant Vamanrao Gutte
age. 43 years, occu. Business.
R/o. Lecturer Colony, Thodg Road,
Ahmedpur, Tq. Ahemedpur Dist. Latur.

...Respondent

...

Advocate for Petitioner : Mr. Munde Suresh Walmikrao
Advocate for Respondent : Mr. Shrikant Madde

...

CORAM : ABHAY J. MANTRI, J.

DATE : 23RD DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by the consent of the learned Advocates for both parties at the admission stage.

2. By this petition, the petitioner/original complainant assails the order dated 01.10.2025, passed by the learned Judicial Magistrate First Class, Latur (for short the '**learned Magistrate**'), below exhibit 109 in SCC No. 551/2017, whereby the application moved by him for setting

aside the evidence closed order was rejected.

3. Learned Advocate for the petitioner submitted that the petitioner had gone out of station, and therefore, could not lead the evidence before the Court in time, and thus, the evidence of the petitioner was closed. However, he contended that there was no intention on the part of the petitioner to prolong the matter or not to lead the evidence, but due to some unavoidable circumstances, he could not adduce the evidence. Therefore, he submitted that if the petitioner is permitted to lead the evidence, it would not cause prejudice to the rights of the respondent. On the other hand, the matter would be determined on its own merits. Therefore, he urged that the petitioner be permitted to lead the evidence of the accountant of his firm, namely Mr. Azhar Shaikh, only.

4. *Per contra*, learned Advocate for the respondent vehemently opposes the petition. However, he submitted that, subject to a cost of Rs. 20,000/-, the petitioner be permitted to lead further evidence and that the original complaint be expedited and disposed of as early as possible. Accordingly, he urged that the appropriate order be passed.

5. Having heard the contention of the learned Advocates for the parties and gone through the impugned order as well as the record, at the outset, it appears that a complaint was filed in 2017, and since

then, it has been pending. Similarly, the petitioner has filed an affidavit of evidence on 19.09.2018, and his evidence was concluded on 18.11.2021. However, from 2021 to 2025, he did not take any further steps to lead evidence, and therefore, by order dated 17.05.2025, the petitioner's evidence was closed. Thereafter, the matter was adjourned for recording the statement of the accused under Section 313 of the Code of Criminal Procedure on 02.06.2025, 11.06.2025, 07.07.2025, and 28.07.2025. On that day, the petitioner moved an application, which the learned Judge rejected.

6. No doubt, it appears that due to not adducing the evidence by the petitioner, the matter has been prolonged and remained pending till the year 2025. The petitioner's act indicates negligence in prolonging the matter.

7. It further appears that the Civil Suit filed by the petitioner for recovery of the amount against the respondent was dismissed by the Civil Court. Therefore, the petitioner wants to examine the witness in support of his case to prove the documents on record.

8. Having considered the above facts, in my view, if one more opportunity is given to the petitioner to lead evidence of the accountant of his firm, namely Mr. Azhar Shaikh, only, it would not cause prejudice to the rights of the respondent. On the contrary, if the petitioner is not

permitted to adduce the evidence, then indeed he would be deprived of his right to adduce the evidence in support of his case. While considering the foregoing fact, it is also necessary to note that, due to the petitioner's failure to adduce evidence in time, the matter has been prolonged. Therefore, costs need to be imposed on the petitioner.

9. That being so, in my view, to meet the ends of justice, it would be appropriate to permit the petitioner to examine the accountant, Mr. Azhar Shaikh, in support of his case only.

10. As a result, the petition is allowed, subject to costs of Rs. 20,000/- (Rupees twenty thousand) to be paid by the petitioner before the learned Magistrate on or before 15.01.2026, failing which, this petition shall stand dismissed. On deposit of the said amount Rs. 10,000/- (Rupees ten thousand), to be paid to the respondent and Rs. 10,000/- (Rupees ten thousand) to be credited to the Government.

11. Needless to clarify that the petitioner shall file the affidavit of evidence of the accountant, Mr. Azhar Shaikh, in the Court on or before 17.01.2026, and also supply a copy of the affidavit of evidence to the respondent on or before 15.01.2026, failing which, the petitioner's right to adduce further evidence shall stand forfeited.

12. It is further made clear that no further time will be granted to adduce the evidence. If the petitioner fails to adduce the evidence,

then the matter will proceed on its own merits.

13. Needless to clarify that the learned Magistrate shall expedite the proceedings and dispose of the same as early as possible on or before 30.04.2026. The rule is made partly absolute in the above terms. Inform this order to the learned magistrate accordingly forthwith.

(ABHAY J. MANTRI, J.)

SPC