

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1116 OF 2025

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Indrajit Shankarrao Nageshkar

...Petitioner

vs.

Jaysingh Ratinath Nageshkar and Others

...Respondents

Mr. Angad Singh Gill a/w. Mr. Venktesh Shewale, for the Petitioner.
Mr. V.R. Dhond, Senior Advocate a/w. Mr. Omkar Nagwekar, for the
Respondent.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 28, 2025

P.C:

1. Heard.
2. A prayer of the petitioner/plaintiff to send the documents at Exhibits 104 and 105 to the Head of the Department, Department of Foreign Languages, Shivaji University, Kolhapur for translation or return those original documents to the plaintiff for getting the same translated by the Department of Foreign Languages, Shivaji University, Kolhapur came to be rejected by the learned Civil Judge, Kolhapur by an order dated 7th October, 2024 on an Application (Exh. 161) in Special Civil Suit No. 89 of 2012. By the said order the learned Judge was also persuaded to forfeit the right of the plaintiff to adduce further oral evidence.
3. The plaintiff preferred an Application for Review (Exh.165). By an order dated 18th November, 2024, the said application for

review also came to be rejected.

4. Both the orders are assailed in this petition.

5. The petitioner has instituted a suit for declaration and injunction in the year 2012. In the said suit, interim applications were filed. An order passed by this Court in Writ Petition No. 10889 of 2013 directing the respondents to lead evidence was challenged before the Supreme Court in Special Leave to Appeal Nos. 23744 of 2016 to 23778 of 2016. By an order dated 10th February, 2020, the Supreme Court dismissed the Special Leave Petitions and expedited the hearing of the suit with a direction that the hearing be concluded preferably within a period of six months thereof. The said period expired. Two extensions were granted by the Supreme Court and, eventually, by an order dated 22nd January, 2025, the Supreme Court has extended the time to complete the trial and deliver the judgment in Special Civil Suit Nos. 425 of 2011, 89 of 2012, 90 of 2012, 91 of 2012 and 92 of 2012 by four months from the date of the said order.

6. In the instant Suit No. 89 of 2012, the plaintiff filed english translation of the documents which were in a German language. The plaintiff examined a witness from BITS Private Limited, which had translated those documents. The said witness, according to the plaintiff, did not prove the translated version in evidence. The

plaintiff thus filed an application seeking a direction to send the original documents to the Department of Foreign Languages, Shivaji University, Kolhapur for translation.

7. By the first impugned order dated 7th October, 2024, the learned Civil Judge was persuaded to reject the application observing, inter alia, that those documents were in possession and knowledge of the plaintiff right from the date of the institution of the suit. BITS Private Limited had intimated the plaintiff that they would not assume any responsibility for the veracity of the translation nor it would stand as a witness to vouch for the correctness of the translation in any Court of law, yet, the plaintiff went ahead to examine the said witness. Adequate opportunity was granted to the plaintiff to prove the translation in evidence. Since the suit has been time bound by the Supreme Court and the plaintiff had all the time to get the documents translated and, yet, filed the application belatedly with a view to reopen the evidence, the application deserved to be rejected.

8. The application for review (Exh.165) came to be rejected by the learned Judge observing that there was neither any error apparent on the face of the record nor any other sufficient cause to review the first order.

9. Mr. Gill, the learned counsel for the petitioner, submitted that

the learned Civil Judge grossly erred in rejecting the application on the ground that the endeavour of the plaintiff was to reopen the evidence. In fact, the plaintiff had examined a witness from BITS Private Limited, who had furnished the translation. However, the witness from BITS Private Limited did not support the plaintiff. Therefore, it was necessary for the plaintiff to get a fresh translation and then examine the translator.

10. Mr. Gill further urged that the application came to be rejected primarily for the reason that the Supreme Court has stipulated time frame for the conclusion of the trial. However, since the Supreme Court has extended time by four months from 22nd January, 2025, it is quite possible to have the translation, examine the witness and conclude the trial within the extended period. If the plaintiff is not permitted to have the translation of the German documents, the plaintiff would suffer grave prejudice.

11. Mr. Dhond, the learned Senior Advocate for the respondents opposed the petition. It was submitted that after the application came to be rejected on 7th October, 2024, the defendants closed their evidence on 18th October, 2024. On that day, with the consent of both the parties, the suit was posted for final arguments on 6th November, 2024. However, on 6th November, 2024 the plaintiff filed an application for Review (Exh.165). The said application came to

be rejected on 18th November, 2024. Since then the suit could not proceed as the plaintiff filed applications, one after another.

12. Mr. Dhond further submitted that the prayer for sending the documents for translation was actuated by a design to delay the disposal of the suit. The documents in question were in the custody of the plaintiff. For over 12 years, the plaintiff did not make any effort to get the documents translated. After examining six witnesses, the application to send the documents to the Head of the Department, Department of Foreign Languages, Shivaji University, came to be filed.

13. In a given case if a party satisfies the Court that, despite the exercise of due diligence, it could not adduce evidence at an earlier point of time, the Court is not denuded of the power to permit such party to adduce the evidence at a later stage. It is trite that procedure is handmaid of justice and should not be allowed to score a march over the substantive justice. The observations of the Supreme Court in the case of **Salem Advocate Bar Association vs. Union of India**¹ with regard to the impact of deletion of Sub Rule (4) of Rule 2 and Rule 17-A of Order XVIII underscore the principle that the Civil Courts inherent power to call for any witness or permit a party to adduce evidence at any stage, is not taken away. The observations in paragraph Nos. 13 and 32 are material and hence

¹ (2005) 6 SCC 344.

extracted below:

Additional Evidence

13] In Salem Advocates Bar Association's case, it has been clarified that on deletion of Order 18 Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e., 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order 18 Rule 17-A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order 18 Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order 18 Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.

..... ...

32] Order 18 Rule 2 Order 18 Rule 2(4) which was inserted by Act 104 of 1976 has been omitted by Act 46 of 1999. Under the said Rule, the Court could direct or permit any party, to examine any party or any witness at any stage. The effect of deletion is the restoration of the status quo ante. This means that law that was prevalent prior to 1976 amendment, would govern. The principles as noticed hereinbefore in regard to deletion of Order 18 Rule 17(a) would apply to the deletion of this provision as well. Even prior to insertion of Order 18 Rule 2(4), such a permission could be granted by the Court in its discretion. The provision was inserted in 1976 by way of caution. The omission of Order 18 Rule 2(4) by 1999 amendment does not take away Court's inherent power to call for any witness at any stage either suo motu or on the prayer of a party invoking the inherent powers of the Court.

(emphasis supplied)

14. In the case of **K.K. Velusamy vs. N. Palanisamy**² the Supreme Court noted the legislative intent behind deletion of Rule 17-A and enunciated the factors which ought to weigh with the Court in permitting the party to adduce evidence at a later stage. The observations in paragraph Nos. 13, 14 and 19 are relevant and hence extracted below:-

2 (2011) 11 SCC 275

13] The Code earlier had a specific provision in Order 18 Rule 17-A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

14] The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

... ..

19] We may add a word of caution. The power under section 151 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 trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

(emphasis supplied)

15. In the light of the aforesaid enunciation of law, the question that comes to the fore is whether the exercise of discretion by the trial Court to refuse to send the documents for the opinion of the Department of Foreign Languages, when such prayer was made at the stage of final argument in the suit, warrants interference ?

16. I have perused the material on record including the copy of the Roznama, in Suit No. 89 of 2012. Ordinarily, the Courts lean in favour of permitting the parties to examine witnesses, including expert witness, as that would assist the Court in arriving at a just decision of the case. However, the peculiar facts of the case and the stage of the proceeding bear upon such prayer.

17. In the case at hand, it becomes evident that the documents in German language, which the plaintiff now seeks to have translated, were in the custody of the plaintiff, nay, those documents were tendered in evidence. The plaintiff got those documents translated from BITS Private Limited. Despite a specific disclaimer by the said agency, the plaintiff examined a person from BITS Private Limited as a witness. After examining six witnesses, including a person from BITS Private Limited, the plaintiff prayed for direction to send those original documents for a fresh translation to Shivaji University, Kolhapur.

18. In these circumstances, the view taken by the learned Civil

Judge cannot be faulted at. As noted above, the suit has been time bound by the order of the Supreme Court in the year 2020. Taking serious view of the failure to dispose the suit, within the stipulated period, despite two extensions, the Supreme Court called a report from this Court and, upon perusal thereof, has finally extended the time by four months. The plaintiff has been alive to the fact that the suit has been time bound by the Supreme Court. Yet, the plaintiff chose to proceed with the trial on the basis of the available translated version, examined a witness from BITS Private Limited and filed application for a fresh translation after examining as many as six witnesses. In this backdrop, the observation of the learned Civil Judge that the intent was to prolong the trial and reopen the evidence cannot be said to be unfounded.

19. The fact that after the evidence of the plaintiff was closed by the order of the Court, the defendants have also closed the evidence and the matter came to be posted for final arguments and, at that stage, the application for review was filed, cannot be lost sight of. Since the defendants have closed their evidence, a direction for sending the documents for a fresh translation and the consequent examination of the translator as a witness, will reopen the trial and would also cause prejudice to the defendants.

20. To sum up, the inaction on the part of the plaintiff was at his

own peril. In these circumstances, I am not inclined to interfere with the impugned orders, in exercise of supervisory jurisdiction.

Hence, the following order.

ORDER

The petition stands dismissed.

(N. J. JAMADAR, J.)