

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1513 OF 2025

Sabruddin H. A. Shaikh Alias Shabbu

...Petitioner

Versus

Vijay Vitthal Sonawane & Ors.

...Respondents

- Mr. Sagar Bataria, for Petitioner.
- Mr. Vijay V. Sonawane, Respondent No.1 -in-person.
- Mr. A.I. Patel, Addl. G.P. a/w Ms. Tejas Kapse, AGP for Respondent No.3.

CORAM : MANISH PITALE, J.

DATE : 20th JUNE 2025.

P. C. :

1. Heard learned counsel for the petitioner and the contesting respondent No.1, who has appeared in person.

2. By this petition, the petitioner has challenged the impugned order dated 01st April 2022, passed by the Maharashtra State Cooperative Appellate Court at Mumbai, whereby an application moved on behalf of the petitioner at the Appellate stage for recalling the witness i.e. DW-1 has been rejected. The appeal is pending before the said Appellate Court.

3. In the present case, the respondent No.1 initiated a dispute, as far back as in the year 2004, raising certain claims against the original respondents. The petitioner herein was proceeded against *ex-parte* against which he approached this Court by filing Writ Petition No.4933 of 2017. By

SHRIKANT
SHRINIVAS
MALANI

Digitally signed by
SHRIKANT
SHRINIVAS MALANI
Date: 2025.06.21
16:50:47 +0530

an order dated 19th December 2017, the petition was allowed, subject to the petitioner depositing costs of ₹ 50,000/- with the respondent No.1. This Court further directed that the dispute would be decided expeditiously and preferably within three months. After the said order was passed, the petitioner filed his written statement and participated in the proceedings before the Original Court i.e. Cooperative Court. In the process, the petitioner even cross-examined the respondent No.1 and thereupon by judgment and order dated 22nd November 2021, the Cooperative Court allowed the dispute filed by respondent No.1 and specifically directed the respondents, including the petitioner herein to handover vacant possession of the suit premises to the respondent No.1. The Cooperative Court also imposed costs of ₹ 1 Lakh on each of the opponents in the dispute.

4. Aggrieved by the same, the petitioner filed Appeal No.4 of 2022, before the Appellate Court, which is still pending. As noted hereinabove, in the pending appeal, for the first time at Appellate, stage the petitioner moved the aforesaid application for recalling the witness DW-1 for cross-examination. This was a witness of the concerned society. The said application was dismissed by the impugned order dated 01st April 2022.

5. The learned counsel for the petitioner vehemently submitted that disposal of the application has resulted in grave prejudice being caused to the

petitioner as cross-examination of DW-1 on the part of the petitioner is necessary to elucidate the truth of the matter before the Court below. It is claimed that since the petitioner was provided an opportunity to participate in the proceeding only after order dated 19th December 2017 passed in Writ Petition No.4933 of 2017, the Appellate Court ought to have favourably considered the application filed on behalf of the petitioner.

6. The respondent No.1 appearing-in-person has also vehemently submitted that such an application filed by the petitioner is another example of dilatory tactics as he has been agitating before the Courts below for the past 21 years and he is yet to enjoy the fruits of the order passed by the Cooperative Court, as far back as 22nd December 2021. It is submitted that there is no merit in the present petition and this Court may consider dismissing the same.

7. In the light of the rival submissions, this Court has considered the contents of the impugned order. The relevant portion of the said order reads as follows :

“10] After considering chronological events stated above it appears that the present appellant was part of the proceeding since 2018. The evidence affidavit OW-1 Pranav Rege, the Secretary of the society was filed on 25/01/2012 is on record so appellant was very well aware about the evidence filed by the Secretary of the society at Exh.32. It is not the contention of the appellant that he

was not aware about the evidence led by the society. The appellant has cross examined the disputant and proceeded further and completed his evidence. He had ample opportunity to go through the defense taken by the society and to call OW-1 for cross examination. He has not filed any application before the Trial Court to that effect and throughout participated the proceeding up to final arguments without filing any application for calling the witness. This clearly goes to show that though the appellant got an opportunity to call that witness however for no reason he failed to avail that opportunity therefore he failed to satisfy the court what prevented him to call that witness at the relevant time. This Hon'ble High Court in the order dtd.19/12/2017 has observed that the matter is dragged so many years and therefore it was expedited and time bound. The appellant in ground no.X submitted that the Trial court failed to appreciate that the evidence of the co-defendant is contradictory to the case put up by the appellant and ought to have been granted opportunity to cross examine that witness. However, the appellant failed to establish that he had applied to the Trial Court to call the said witness for cross. He has challenged the findings of the Ld Trial Court recorded in para 30 of the Judgment and the same will be considered while deciding the appeal on merits.

- 11] *In Annapurna Devi Vs. Administrator General UP (2010) 3 CurCC 239, the Hon'ble Calcutta High Court in para 12 of the decision it is observed that, "Even in the special*

appeal only bald allegation has been made that DW-2 depose contrary to the stand of the appellant and indirectly supported the case of the plaintiff. Nothing specific has been pointed out from the cross examination of DW-2 to support this allegation. In our opinion cross examination of co-defendant cannot be permitted on the mere asking of defendant and the defendant has necessarily to satisfy the court that co-defendant in his examination has taken stand adverse to that taken by the defendants.”

12] *In the case in hand the appellant had ample opportunity to call the witness of the society for cross examination however he failed to do so for no reason. As I have already discussed that he has raised one of the grounds to challenge legality of the judgment impugned that he did not get an opportunity to cross examine co-opponent and therefore the said ground will be considered while deciding the appeal on merits. Hence with due respect to the ratio as referred above, I am of the opinion that it is not made applicable to the case in hand.*

13] *In the light of the above discussion I do not find substance and merits in the application. Hence I answer the points accordingly and proceed to pass the following order.*

ORDER

Application at Exh.10 stands rejected.

No order as to cost.”

8. The above quoted portion of the order of the Appellate Court

demonstrates proper application of mind into the chronology of events and the fact that after the petitioner was permitted to participate in the proceedings pursuant to order dated 19th December 2017, passed by this Court, he had ample opportunity to fully participate in the proceedings. In fact, the petitioner admittedly cross-examined the respondent No.1 himself and there was sufficient opportunity for the petitioner to cross-examine DW-1 at that stage itself. Instead of doing so, the petitioner continued to participate before the Cooperative Court and after all parties were heard at length, the said Court by a detailed judgment and order dated 22nd November 2021, allowed the dispute in favour of respondent No.1.

9. In such circumstances, the Appellate Court is fully justified in rejecting the application (Exhibit 10) filed on behalf of the petitioner. There is substance in the contention raised by the respondent No.1 that this is nothing but another dilatory tactic adopted by the petitioner to somehow delay the proceedings and to tire the respondent No.1 into submission, despite the fact that the Cooperative Court after the pendency of the matter before it for a period of about 17 years, eventually held in favour of respondent No.1.

10. There is no ground made out by the petitioner to exercise Writ jurisdiction. The impugned order passed by the Appellate Court is fully justified. Hence, the writ petition is dismissed.

11. It is brought to the notice of this Court that the appeal before the Appellate Court is at final stages and only because of pendency of the present writ petition, the Appellate Court has not decided and disposed of the appeal.

12. In view of the above, the Appellate Court is directed to pass final judgment and award in Appeal No.4 of 2022, on or before 11th July 2025.

13. Needless to say, this Court has not made any observations on the merits of the matter.

(MANISH PITALE, J.)