

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 765 OF 2024**

M/s. Shital Construction Company through  
its partner Chandrakant Linganna Pujari ...Petitioner

**Versus**

The Church of Our Lady of Health Sahar and  
ors. ...Respondents

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SUBHASH  
KULKARNI

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Mr. Yogesh Patil, for the Petitioner.

Ms. Asha Bhuta, i/b Bhuta & Associates, for the  
Respondents.

**CORAM: N. J. JAMADAR, J.**

**DATED : 17<sup>th</sup> MARCH, 2025**

**PC:-**

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 31<sup>st</sup> October, 2023 passed by the learned Judge, City Civil Court, whereby an application to recall the plaintiff for further examination purportedly under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 ("the Code") came to be rejected.
3. The petitioner had instituted a suit for specific performance of the contract. In the cause-title of the plaint, the plaintiff has asserted that it is a partnership firm registered under the Indian Partnership Act. During the course of the cross-examination, however, it appears that when the plaintiff

was confronted with a question as to whether he has produced a copy of the certificate of registration, the witness volunteered that the partnership is not registered.

4. At the stage of final argument, the petitioner filed an application to recall the plaintiff's witness for further examination and produce the certified copy of the registration certificate on record. The learned Judge, City Civil Court, was persuaded to reject the application observing that the endeavour on the part of the plaintiff was to fill in the lacuna in his case.

5. From the perusal of the plaint, it becomes evident that the plaintiff claimed that it is a partnership firm registered under the Indian Partnership Act. It does not appear that the said fact was specifically put in contest so as to warrant framing of an issue of bar to the suit under Section 69(2) of the Indian Partnership Act. The controversy seems to have arisen on account of a voluntary statement made by the plaintiff's witness probably in an unguarded moment.

6. The learned Counsel for the petitioner submitted that the petitioner only intends to produce a certified copy of the firm registration certificate to place the correct facts on the record of the Court and obviate the possibility of the plaintiff being non-

sued on account of an incorrect statement made in the cross-examination.

7. The learned Counsel for the respondents resisted the prayer. It was submitted that if the certified copy of the firm registration certificate is admitted in evidence, the defendant would be deprived of the opportunity to raise the ground that partnership firm is not registered under the Indian Partnership Act.

8. It becomes abundantly clear that the ground of non-registration of the firm was not specifically raised and, therefore, no issue was framed by the trial court. In such circumstances, permission to produce the certified copy of the firm registration certificate would not cause prejudice to any of the parties and, on the contrary, assist the Court in arriving at the just decision of the case. As the certified copy of the firm registration certificate can be admitted in evidence as a public document, there is no need to recall plaintiff's witness for further examination. I am, therefore, inclined to partly allow the petition.

9. Hence, the following order:

**: O R D E R :**

(i) The petition stands partly allowed.

- (ii) The petitioner – plaintiff is permitted to produce a certified copy of the firm registration certificate.
- (iii) None of the parties shall be entitled to lead any further evidence.
- (iv) The learned Judge, City Civil Court, is requested to make an endeavour to hear and decide the suit as expeditiously as possible.

Petition stands disposed.

[N. J. JAMADAR, J.]