

Shabnoor

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

WRIT PETITION NO.3421 OF 2024

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2025.11.10
15:06:17 +0530

Dandelion Cooperative Housing
Society Ltd. Through
Its Authorised Representative
Clayoton Mendonce

... Petitioner

V/s.

Jyotsna Chagrani & Anr.

... Respondents

Mr. Yazad a/w Y. Palne i/b Arshil Shah, for the
petitioner.

Mr. Arshil A. Shah, for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 10, 2025

P.C.:

1. In this petition under Article 227 of the Constitution, the petitioner challenges the order of the Co-operative Court. The Co-operative Appellate Court confirmed that order. The petitioner had filed an application after the closure of evidence and before the start of final arguments. In that application the petitioner requested that three witnesses be recalled to prove certain documents mentioned in the application.

2. The petitioner is the original disputant. He filed a dispute before the Co-operative Court alleging that the respondents carried out unauthorised renovation. According to the petitioner, the renovation caused damage to the existing structure and resulted in alterations to several parts of the property. In an earlier round of

the proceedings, the Co-operative Court had granted liberty to both sides to place necessary documents on record.

3. The petitioner states that although he was granted liberty, some documents could not be proved during the evidence stage. The petitioner therefore filed an application after the evidence was closed but before oral arguments began. In that application, he requested that three witnesses be recalled. These witnesses are (i) Mr. Clayton Mendonca, (ii) Mr. Mahesh Golve, and (iii) Mr. Abdul Khan. The petitioner wanted to recall them only for proving certain documents including the bye-laws of the society.

4. The Co-operative Court heard both sides and rejected the application. It held that the petitioner had adequate opportunity during the trial to prove the documents and that no further recall was necessary. The Co-operative Appellate Court upheld that view and dismissed the petitioner's appeal. This led to the present writ petition.

5. The point for determination is whether a witness can be recalled after evidence is closed only to fill gaps in the case of the disputant.

6. After examining the entire record and the reasons placed by the petitioner, I reach a clear conclusion. The petitioner had full opportunity during the trial to prove the documents. He did not show any sufficient reason explaining why the documents could not be proved at the proper stage. Mere oversight or negligence cannot be treated as a valid ground to reopen the stage of evidence.

7. The petitioner relied on the principle similar to the power of Civil Courts under Order XVIII Rule 17 of the Code of Civil Procedure. That provision allows a court to recall a witness. However, that power is not meant to give a party a second chance to fill gaps or improve its case. The law restricts such recall to situations where the court needs clarification from a witness. It is not a right available to a party whenever it fails to prove something earlier.

8. Once the evidence is closed and the matter reaches the stage of final arguments, the trial must reach its logical end. The law does not permit recall of witnesses only because a party now realizes that some documents were not proved. Accepting such a plea would cause delay and encourage parties to remain careless during evidence. The judicial process cannot function on such uncertainty.

9. The Courts below considered these principles. They found that the petitioner had adequate opportunity. They found no sufficient cause for recalling the witnesses. Their decision rests on sound reasoning and on settled legal principles. Therefore, I hold that the application for recall was rightly rejected.

10. The writ petition, therefore, stands dismissed. No order as to costs.

(AMIT BORKAR, J.)