



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2444 OF 2025**

Ashish Kumar Choudhary and Anr. ... Petitioners
versus
Vishrut Enterprises Pvt. Ltd.
(formerly known as Vishrut Infotech
Pvt. Ltd.) and Ors. ... Respondents

Mr. Rajendra B. Mokashi with Mr. Aditya Mokashi i/by Mr. Saurabh Oka, for Petitioners.

Mr. Suresh M. Sabrad with Ms. Neha M. Zanje i/by Mr. Pratik S. Sabrad, for Respondent Nos.1 and 2.

Mr. Pravin Upadhyay, for Respondent No.7.

CORAM: N.J.JAMADAR, J.

DATE : 25 FEBRUARY 2025

ORAL ORDER :

1. Rule. Rule made returnable forthwith and with the consent of the parties, heard finally at the stage of admission.

2. The challenge in this Petition is to an order dated 16 January 2025 passed by the learned Civil Judge, Sr. Division, Panvel, whereby the application preferred by the Petitioners and co-defendants to recall P.W.1 for further cross-examination, came to be rejected.

3. It appears that the evidence of P.W.1 was recorded over a period of time. On 14 October 2024, cross-examination on behalf of the Petitioners and other Co-Defendants was concluded by the Advocate, who then represented the Petitioners and co-Defendants. Thereafter, it seems, there

was a change in the Advocates for the Defendants. Thereupon, it was realized that material questions were not put during the course of cross-examination. Hence, an application was filed to recall P.W.1 for further cross-examination.

4. The learned Civil Judge was of the view that, the Defendants had not made out sufficient ground to seek recall of P.W.1 for cross-examination.

5. Mr. Mokashi, learned Counsel for the Petitioners, urged that the material on record indicates that there was no effective cross-examination on behalf of the Defendants. If the Defendants are not permitted to cross-examine P.W.1 effectively, the Defendants would suffer a grave prejudice.

6. Mr. Sabrad, learned Counsel for the Respondent Nos.1 and 2, resisted the Petition. It was submitted that the Defendants had cross-examined the Plaintiffs and after the Defendants closed the cross-examination, the Court proceeded to record the evidence of the Defendants. No justifiable cause has been ascribed for not seeking the recall of P.W.1, immediately. The entire endeavour on the part of the Petitioners appeared to be to delay the disposal of the suit. Mr. Sabrad placed reliance on a decision of this Court in the case of Balkrishna Shivappa Shetty V/s. Mahesh Nenshi Bhakta and Ors.¹

7. In view of the deletion of the provisions contained in Order 18 Rule 2(4) and Rule 17-A, the Court cannot order examination of any witness at any

¹ 2003(3) Mh.L.J. 47

stage of the proceedings as it was empowered to do before their deletion by CPC Amendment Act, 1999. However, in a given case, if the Court finds that recall of a witness or examination of a witness or reopening of the evidence is warranted in the interest of justice, the Court can, by resorting to the provisions contained in Section 151 of the Code, recall a witness, permit a party to examine a witness or reopen the evidence of a party.

8. A three Judge Bench of the Supreme Court in the case of Salem Advocate Bar Association vs. Union of India² with regard to the impact of deletion of Sub Rule (4) of Rule 2 and Rule 17-A of Order XVIII underscored 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 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

2 (2005) 6 SCC 344.

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(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)

9. In the instant case, I have perused the cross-examination of the Plaintiffs witness, on behalf of the Petitioners and the co-defendants. It appears that the affidavit in lieu of examination in chief contained as many as 84 paragraphs. Cross-examination on behalf of the Petitioners and co-defendant Nos.2, 3, 6 to 12, 14, 16 to 20 and 22 to 32 seems to have been concluded in two paragraphs i.e. paragraphs Nos.85 and 86 barely running

into two pages. From the perusal of the cross-examination, the Court finds substance in the submission on behalf of the Petitioners that P.W.1 has not been effectively cross-examined and relevant questions were not put.

10. It is true, change in the Advocate of a party cannot be a justifiable ground to recall a witness for cross-examination. In the case at hand, however, it appears that there was no effective cross-examination. It is not a case of failure to put one or two questions.

11. In this view of the matter, this Court considers it expedient in the interest of justice to give opportunity to the Petitioners to cross-examine P.W.1. Since an apprehension was expressed on behalf of the Plaintiffs, which finds echo in the impugned order, that, the Defendants may protract the trial, the Court considers it appropriate to impose conditions while providing opportunity to further cross-examine P.W.1.

12. The Writ Petition, thus, stands allowed.

13. The impugned order dated 16 January 2025 stands quashed and set aside.

14. P.W.1 is recalled for cross-examination by the Petitioners subject to the following conditions :

(a) The Petitioners / Defendant No.7 shall appear before the Trial Court on 4 March 2025 i.e. the next scheduled date of the listing of the suit before the trial Court.

(b) The Petitioners shall conduct cross-examination of P.W.1 on 4 March 2025.

(c) It is hereby made clear that the cross-examination of P.W.1 on behalf of the Petitioners shall be concluded in two sessions, in the maximum, and the Petitioners shall not seek any adjournment for conducting cross-examination of P.W.1 on any count whatsoever.

(d) The Petitioners shall also pay costs of Rs.5,000/- to the Plaintiffs within a period of two weeks from today.

The Writ Petition stands disposed.

(N.J.JAMADAR, J.)