

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3082 OF 2025

Murlidhar Tilwani ...Petitioner
Versus
Chandru G. Wadhwa and ors. ...Respondents

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Mr. Aseem Naphade, a/w Yesha Thaker, i/b LJ Law, for the
Petitioners.
Mr. Amey Patil, a/w Asadullah Shaikh, i/b Saba Shaikh, for
Respondent No.1.
Mr. Siddhanth Chhabria, i/b Sahana Ladiwal, for
Respondent Nos.2 to 13.

CORAM: N. J. JAMADAR, J.
DATED: 5th MARCH, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. This petition assails an order dated 18th January, 2025, passed by the learned Judge, City Civil Court, Bombay, whereby Notice of Motion No.184 of 2025 taken out by the petitioner – plaintiff to set aside the order dated 11th December, 2024 foreclosing the right of the petitioner – plaintiff to adduce additional evidence, came to be rejected.
3. SC Suit No.5914/2005 is time bound by the order of the Court. It seems that an additional written statement came to be filed on behalf of the defendants. On 6th September, 2024

the Court framed additional issue. Consequent thereto the parties were permitted to adduce evidence strictly on the additional issue framed at 1(A) and the matter was adjourned to 9th September, 2024. The petitioner did not lead additional evidence. Adjournments were sought. In the meanwhile, the application for issue of witness summons was filed. The said application came to be rejected. Again adjournments were sought and eventually by an order dated 11th December, 2024, the learned Judge, City Civil Court, foreclosed the right of the plaintiff to adduce additional evidence observing that it appeared that the plaintiff was not interested to adduce the evidence and the matter was posted for recording of evidence of the defendants. On 13th December, 2024 the defendants sought time to lead evidence. On 20th December, 2024, the defendants closed their evidence. Thereafter on 3rd January, 2025 the petitioner filed the Notice of Motion to set aside the order dated 11th December, 2024, and permission to file the evidence.

4. In paragraph 8 of the order, the learned Judge, City Civil Court, has encapsulated the date-wise progress in the trial. Evidently, the plaintiff had sought adjournments on multiple occasions.

5. The issue which merits consideration is whether the plaintiff deserves an opportunity to lead additional evidence when additional issue which was framed on 6th September, 2024. Undoubtedly, it cannot be said that the plaintiff had not had adequate opportunity to lead additional evidence. This Court finds that after the learned Judge, City Civil Court, closed the evidence of the plaintiff, the defendants have not led any evidence and closed their evidence by filing evidence close pursis. Thereafter the matter came to be posted for advancing arguments. It thus implies that no substantial progress was made after the closure of the evidence of the plaintiff. Nor it can be said that the defendants have altered their position by adducing evidence on the footing that the plaintiff would not lead further evidence.

6. In the aforesaid view of the matter, though the defendants have strenuously opposed the prayers in the instant petition, yet, to advance the cause of substantive justice, especially in view of fact that the additional evidence was permitted to be adduced consequent to framing of the additional issue on 6th September, 2024, I am inclined to provide an efficacious opportunity of hearing to the plaintiff.

At the same time, it must be recorded that the conduct of the plaintiff cannot be said to be unblemished. Once the learned Judge, City Civil Court, had imposed the costs of Rs.5,000/-. In the facts of the case, the plaintiff deserves to be saddled with costs.

7. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned order as well as the order dated 13th December, 2024 foreclosing the right of the plaintiff to lead additional evidence stand quashed and set aside.
- (iii) The plaintiff is permitted to adduce additional evidence strictly in terms of the order dated 6th September, 2024 on the additional issue No.1(A).
- (iv) The plaintiff shall appear before the learned Judge, City Civil Court, on 7th March, 2025 for recording further evidence in continuation of the additional affidavit in lieu of examination-in-chief tendered on 3rd January, 2025.
- (v) The plaintiff shall pay costs of Rs.10,000/-, to each of the defendants, who have appeared before the trial

court, within a period of three weeks from the date of uploading of this order.

- (vi) The plaintiff shall not seek any adjournment for the purpose of adducing additional evidence and even for submitting himself to cross-examination.
- (vii) In view of the permission being granted to the plaintiff to adduce additional evidence, after evidence of the plaintiff is over, the defendants shall also be at liberty to lead evidence, if they wish to.

The petition stands disposed.

[N. J. JAMADAR, J.]