

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5366 OF 2025

Capri Global Holdings Private Limited ...Petitioner

Versus

Macrocosm Industries Private Limited and
ors. ...Respondents

Mr. Surel Shah, Sr. Advocate, i/b Mr. Vishal Tambat, for the
Petitioner.

Mr. Sachin Dhakephalkar, a/w Mr. Vinod Shinde and Mr.
Vinod Bade, for Respondent No.1.

Mr. Akshay Doctor, a/w Mr. Karan Jagtap and Mr. Parag
Sawant, i/b P. S. Chambers, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED: 5th MAY, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to two orders dated 11th February, 2025 and 27th February, 2025 passed by the learned Civil Judge, Panvel, in Special Civil Suit No.180 of 2010.
3. By the first order, the learned Civil Judge, rejected an application (Exhibit-504) preferred by the petitioner – defendant No.6 seeking a direction to the plaintiff to conduct the cross-examination of defendant No.2, first, before

defendant No.6 is called upon to cross-examine defendant No.2.

4. Subsequently, the trial court passed 'no cross' order against defendant No.6. An application (Exhibit-516) was preferred by defendant No.6 to set aside the said order. The trial court permitted defendant No.6 to cross-examine defendant No.2 subject to payment of costs. Though the costs was paid, the defendant No.6 did not cross-examine defendant No.2 and instead filed a pursis to the effect that defendant No.6 was in the process of challenging the aforesaid order dated 11th February, 2025.

5. Thus, by the second order dated 27th February, 2025, the trial court directed that the defendants right to cross-examine defendant No.2 stands foreclosed.

6. Mr. Shah, the learned Senior Advocate for the petitioner, submitted that in an identical fact-situation, in WP/1642/2025 by an order dated 20th March, 2025, this Court has permitted defendant No.1 to cross-examine defendant No.2 by setting aside 'no cross' order. Same dispensation may be extended to the petitioner herein.

7. Mr. Dhakephalkar, the learned Counsel for the respondents, resisted the submission on behalf of the

petitioner. It was submitted that there is a material distinction between the case of defendant No.1 and defendant No.6. Defendant No.1 had approached this Court when 'no cross' order was passed. However, the petitioner herein had sought recall of the order of 'no cross' and, despite the recall of the said order, declined to cross-examine defendant No.2. It was submitted that the petitioner has approached this Court belatedly, with a view to further delay the disposal of the suit, which has been expedited by the orders of the Supreme Court and this Court.

8. I have perused the impugned orders and the order passed by this Court in WP/1642/2025 dated 20th March, 2025. As pointed out by Mr. Dhakephalkar there is indeed difference in the situation of defendant No.1 and defendant No.6, in as much as defendant No.6 had sought the recall of the 'no-cross' order and did not cross-examine defendant No.2 despite the recall of 'no-cross' order. However, the reason for which defendant No.6 refused to proceed with the cross-examination deserves to be noted. The defendants were insisting for cross-examination of DW-2 by the plaintiffs, first, on the premise that defendant No.2 was supporting the case of the plaintiffs. It would, therefore, be expedient in the

interest of justice to give the same dispensation as has been extended to defendant No.1.

9. At the same time, it is necessary to grant further liberty to the plaintiff to recall DW-2 for further cross-examination. Therefore the defendant No.6 is permitted to cross-examine defendant No.2, with further liberty to the plaintiff to recall defendant No.2 for further cross-examine in the event the plaintiff considers that during the course of the cross-examination of defendant No.2 by defendant No.6, certain admissions which are prejudicial to the plaintiff are elicited or the matter introduced in the cross-examination of defendant No.2 by defendant No.6, needs some clarification.

10. Subject to aforesaid clarifications, the order dated 27th February, 2025 foreclosing the right of defendant No.1 to cross-examine defendant No.2 stands set aside.

11. Defendant No.6 shall not seek any adjournment to conduct the cross-examination of defendant No.2.

12. Petition disposed.

[N. J. JAMADAR, J.]