

SAINATH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16002 OF 2025

Balkrishan Pritamlal Wadhawan ..Petitioner

Versus

Indu Shyam @ Shriram Batra & Ors ...Respondents

Mr. Pradip Thorat, Sonali Agarwal, a/w. Shrushti Relekar i/b
Dhruve Liladhar & Co., for the Petitioner.

Mr. Raj Mehta i/b RKM Legal Services, for Respondent No. 1.

CORAM: N. J. JAMADAR, J.

DATE : 03rd DECEMBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 22nd August, 2025 passed by the learned Judge, City Civil Court whereby the Notice of Motion No. 2678/2023 taken out by the petitioner-Defendant No. 1 to recall the plaintiff for further cross-examination, under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 came to be rejected.
3. It appears that, the cross-examination of the plaintiff was recorded on commission on 03rd December, 2021. It was submitted that, certain relevant and vital questions remained to

be put to the plaintiff. The defendant has yet not commenced his evidence. Therefore, the view of the Trial Court that, the application was filed to fill in the lacuna may not be correct.

4. The learned Counsel for the plaintiff submitted that, the cross-examination of the plaintiff was concluded on 03rd December, 2021. Yet, the Notice of Motion was not moved immediately thereafter. The Defendant No. 1 has resorted to dilatory tactics.

5. The suit has been instituted for partition and separate possession of the suit property. The Defendant No. 1's evidence is yet to commence. In the circumstances of the case, the cause of justice would be advanced if the petitioner/Defendant No. 1 is provided an opportunity to conduct further cross-examination of the plaintiff. However, to take care of the grievance on the part of plaintiff that, the defendant has resorted to dilatory tactics, the court considers it appropriate to put the Defendant No. 1 to terms.

6. Hence, the following order.

::ORDER::

- i) The petition stands allowed.
- ii) The impugned order stands quashed and set aside.

- iii) Notice of Motion No. 2678/2023 stands allowed.
- iv) The Defendant No. 1 is permitted to further cross-examine the plaintiff, subject to following conditions:-
 - a) The further cross-examination by the Defendant No. 1 shall be concluded within one session.
 - b) The Defendant No. 1 shall pay costs of Rs. 5,000/- (Rupees Five Thousand) to the plaintiff within a period of one week from today.
 - c) Mandate of the Commissioner to record the cross-examination of the plaintiff, stands extended till 21st January, 2026.
 - d) In the meanwhile, after seeking convenience of the learned Commissioner, the parties shall conclude the exercise of recording of further cross-examination of the plaintiff, in one session.

7. The petition stands disposed.

[N. J. JAMADAR, J.]