

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17194 OF 2025

Elegant Marbles And Grani Industries Ltd. ...Petitioner

Versus

Satish Dhirajlal Vithlani And Ors ...Respondents

Mr. Nirman Sharma with Anjal N. Amin i/by M/s B. Amin & Co. for
Petitioner.

Ms. Ranjana Parikh for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 17th December 2025

P.C.:

1. Heard Mr. Sharma, learned Counsel for the Petitioner and
Ms. Parikh, learned Counsel for the Respondent.

2. The Petitioner is the original Defendant No.40 and the
Respondents are the original Plaintiffs in T.E.& R. Suit No.5/6 of
2008 pending in the Court of the learned Small Causes Court at
Mumbai.

3. At the outset, Mr. Sharma, learned Counsel for the Petitioner,
on instructions, states that, he is withdrawing the Writ Petition as
far as challenge to the Order dated 19th November 2025 passed by
the learned Judge, Small Causes Court, Mumbai in T.E.& R. Suit
No.5/6 of 2008. The said Order dated 19th November 2025 has

been passed regarding admissibility of the documents filed by the Defendant No.40. He states that the Petitioner will file separate Writ Petition/ proceedings challenging the said Order. He states that no adjournment will be taken on that ground before the learned Trial Court. Accordingly, the Writ Petition is allowed to be withdrawn as far as challenge to the Order dated 19th November 2025 passed by the learned Judge, Small Causes Court, Mumbai in T.E.& R. Suit No.5/6 of 2008.

4. The challenge in this Writ Petition filed under Article 227 of the Constitution of India is to the following Orders :

(i) Order dated 21st November 2025 passed below Exhibit-1855 in T.E.& R. Suit No. 5/6 of 2008 passed by the learned Judge, Small Causes Court, Mumbai, rejecting the Application taken out by the present Petitioner i.e. Defendant No. 40, by which request is made to defer the cross-examination of Defendant No. 40 for a period of 8 days as the DW-11 – Rajesh Agarwal was to travel out of India for business purpose from 22nd November 2025 to 1st December 2025.

(ii) Order dated 24th November 2025, by which adjournment application filed on behalf of Defendant No.40 bearing Exhibit-1856 has been rejected on the ground that the application filed by Defendant No.40 to defer the cross-examination has been rejected by said Order dated 21st November 2025.

(iii) Order dated 24th November 2025 passed below Exhibit-1 in T.F. & R. Suit No. 5/6 of 2008, by which as said DW-11 Rajesh Agarwal i.e. witness of the Defendant No.40 was absent, evidence of Defendant No. 40 is closed.

iv) Order dated 4th December 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-1862 in T.E.& R. Suit No.5/6 of 2008 rejecting said application seeking to recall and set aside Order dated 21st November 2025 passed below Exhibit-1855, Order dated 24th January 2025 passed below Exhibit-1 and Order dated 24th November 2025 passed below Exhibit-1856.

5. The main reason given by the learned Judge of the Small Causes Court in passing impugned Orders is that the Suit has been expedited by the Supreme Court and the High Court.

6. It is true that the Suit has been expedited by the Supreme Court by Order dated 4th January 2019 and by this Court by Order dated 20th November 2019, however, perusal of record shows that the witness of Defendant No. 40 i.e. D.W. 11- Rajesh Agarwal was in genuine difficulty as he was travelling out of India from 22nd November 2025 to 1st December 2015 for business purpose.

7. In fact, learned Counsel for the Petitioner points out Say filed by the Respondents-Plaintiffs to the Application bearing Exhibit-1862 wherein it has been stated that by way of concession in the interest of saving time and efforts in multiplicity of legal proceedings and to ensure smooth conduct of further trial and to avoid any interruption, evidence of DW-11 be recorded after evidence of remaining Defendants, who are allowed to lead evidence is completed.

8. As the reasons given in the Application bearing Exhibit-1855 in T.E.& R. Suit No.5/6 of 2008 filed by the Petitioner are genuine, in the interest of justice, following Orders are quashed and set aside:-

(i) Order dated 21st November 2025 passed below Exhibit-1855 in T.E.& R. Suit No. 5/6 of 2008 by the learned Judge, Small Causes Court, Mumbai,

(ii) Order dated 24th November 2025 passed below Exhibit-1 in T.E.& R. Suit No. 5/6 of 2008 by the learned Judge, Small Causes Court, Mumbai closing the evidence of the Plaintiff.

(iii) Order dated 24th November 2025 passed below Exhibit-1856 in T.E.& R. Suit No. 5/6 of 2008 by the learned Judge, Small Causes Court, Mumbai by which the said application has been rejected.

(iv) Order dated 4th December 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-1862 in T.E.& R. Suit No.5/6 of 2008.

9. Resultantly, the Order closing evidence of Defendant No.40 is quashed and set aside.

10. At this stage, Ms. Parikh, learned Counsel for the Respondents i.e. the original Plaintiffs submit that presently witness of Defendant No. 47 is under cross-examination. She states that cross-examination of DW-11 Rajesh Agarwal, who is the witness of Defendant No.40 can be conducted after cross-examination of witness of Defendant No.47 is completed.

11. Accordingly, the learned Trial Court is requested to schedule the cross-examination of DW-11 after the cross-examination of the witness of Defendant No.47 is completed.

12. Both the parties shall co-operate with the Trial Court for disposal of the said T.E. & R. Suit No. 5/6 of 2008 expeditiously and in time bound manner.

13. Learned Counsel for the Petitioner, on instructions, submits that no further dates will be taken except in exceptional circumstances.

14. Accordingly Writ Petition is disposed of in above terms, however, with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
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