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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.38652 OF 2025
IN
WRIT PETITION NO.14955 OF 2024

Matruchaya Cooperative Housing
Society Ltd., through it's Chairman
Popatlal C. Bagmar ... Applicant.

V/s.

Yashodeep Construction Company,
thorugh it's partner Vijay
Jawaharlal Jain ... Respondent

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Mr. Shailendra S. Kanetkar with Mr. Shubham
Suryawanshi for the applicant.

Mr. Shrivallabh S. Panchpor for the respondent/
petitioner in WP.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 22, 2025

P.C.:

1. The respondent society has moved this review application seeking recall of the judgment and order dated 26 September 2025 passed in Writ Petition No. 14955 of 2024.

2. The foundation of the application is procedural. The society states that it was served with notice of the writ petition. On the returnable date, the matter was adjourned to a distant date. The society then decided to engage an Advocate. According to the applicant, because of the long adjournment, the concerned officer lost track of the listing. The matter thereafter came to be

adjourned from time to time. The society asserts that it forwarded the vakalatnama, relevant papers, and a resolution dated 2 October 2025. Before these steps could fructify into effective representation, the writ petition was taken up on 26 September 2025 and was allowed. On this basis, the society seeks recall of the final order.

3. When the application is examined closely, the real reason pleaded is the failure of the applicant to engage an Advocate in time. The record, however, tells a different story. The society was served with notice of the writ petition in November 2024. From that date till 26 September 2025, a period of several months elapsed. During this entire period, no Advocate was engaged and no appearance was caused before this Court. A litigant who has notice of proceedings carries a continuing duty to remain vigilant. An adjournment does not suspend that duty. Internal lapses, change of officers, or loss of recollection of dates are matters within the control of the litigant. Such reasons do not constitute sufficient cause. Paragraphs 2(d) and 2(e) of the application, therefore, do not disclose any ground which would justify recalling a final judgment duly passed after hearing.

4. Learned Advocate for the applicant placed reliance on the judgment of the Supreme Court in *Bagai Construction v. Gupta Building Material Store*, (2013) 14 SCC 1. He submitted that the power of recall, particularly of witnesses, must be exercised with restraint. According to him, such power cannot be used to repair defects in a party's case. By drawing attention to the cross examination of the petitioner, he argued that the attempt to

reopen the matter is only to fill gaps which became apparent after the judgment.

5. The reliance on *Bagai Construction* does not advance the applicant's case. In that decision, the Supreme Court dealt with a situation where the application for recall was moved after final arguments had concluded, after the matter was heard on several occasions, and after the judgment was reserved. The Court found that the application was a belated attempt to avoid an adverse judgment and to improve the case by introducing material which ought to have been placed earlier. It was in that factual backdrop that the Supreme Court held that even inherent powers under Section 151 of the Code of Civil Procedure cannot be invoked to permit such a course. The ratio of the judgment is grounded in discipline of procedure and finality of adjudication.

6. In the present case, this Court has already considered these principles while passing the original order. Paragraphs 7, 8, and 9 of the judgment under review reflect the same core reasoning which weighed with the Supreme Court in *Bagai Construction*. The applicant had due notice. It had adequate time. It failed to act with diligence. The order was not passed behind its back but in the face of its continued absence. No mistake, no inadvertent error, and no patent illegality is shown on the face of the record. Review jurisdiction is narrow. It cannot be used as a substitute for an appeal or to undo the consequences of one's own inaction.

7. For these reasons, no ground is made out to recall the judgment and order dated 26 September 2025.

8. The interim application, therefore, stands rejected.

(AMIT BORKAR, J.)