

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 6054 OF 2025

IN

COMMERCIAL IP SUIT NO. 7 OF 1994

P Banerjee Mihijam

..Applicant

In the matter between.

ICPA Health Products Private Limited

...Plaintiff

Versus

P Banerjee Mihijam

...Defendant

Mr. Sandeep Parikh a/w Mr. Umair Merchant, Kanak Purohit i/b Neha Mehta & Co., for the Plaintiff.

Mr. Shanay Shah a/w Mr. Darshan R. Mehta, Ms. Megha Sanghavi i/b Dhruve Liladhar & Co., for the Defendant.

CORAM : ARIF S. DOCTOR, J.

DATE : 18th NOVEMBER 2025

P.C.

1. The Applicant, who is the Defendant in the captioned Suit has filed the captioned Interim Application seeking the following substantive reliefs:

- "a. Allow the present application and direct the re-opening of the evidence of Defendant's Witness No. 1, Mr. Rohit Mehta;
- b. Permit the Defendant to file an additional affidavit of evidence of Mr. Rohit Mehta exhibiting the newly discovered original documents;"

2. Mr. Shah learned counsel appearing on behalf of the Applicant has at the outset pointed out that the present Interim Application is necessitated because

the Defendants second witness namely Dr. Kirti Sheth, is 91 years of age and is unable to give evidence because of his advanced age. Mr. Shah has further pointed out that at the time when Dr. Kirti Sheth had filed her Affidavit of Evidence, the Defendant was unable to locate the original of certain documents which were sought to be proved and exhibited --; through the evidence of Dr. Kirti Sheth. He however submitted that the original of those documents have not been found and the details of which are set out in paragraph 17 of the Interim Application, and it is for this purpose the present Interim Application has been filed to enable the Defendant to prove the said documents through the Defendants First Witness i.e., Mr. Rohit Mehta.

3. Mr. Parikh, learned counsel for the Plaintiff, has opposed the application, on the ground that the power to recall a witness under Order XVIII Rule 17 CPC vests exclusively in the Court. He submits that since the Court has not exercised such power *suo motu*, the present Interim Application is not maintainable.

4. In response, Mr. Shah placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Ram Rati v. Mange Ram (Dead) through LRs***,¹ to point out that under Section 151 of the CPC this Court could always in the interest of substantive justice permit an application for recall of a witness. Mr. Shah then reiterated that in the facts of the present case, the Applicants had set out that the second witness could not now give evidence on account of advanced age and also that the Defendant now had the original of the documents which were sought to be introduced through the evidence of the proposed second

1 (2016) 11 SCC 296

witness, Dr. Kirti Shah. He thus submitted that the present Interim Application was required to be allowed in the substantive interest of justice.

5. Having heard learned counsel and having perused the record, I am satisfied that sufficient cause has been made out for exercise of this Court's inherent powers under Section 151 CPC. The Interim Application makes out a case of sufficient cause. No reply has been filed by the Plaintiff to oppose, and the only opposition is that the provisions of Order XVIII Rule 17 are only available to the Court. This is squarely answered by the decision of the Hon'ble Supreme Court in the case of **Ram Rati** in which the Hon'ble Supreme Court *inter alia* held as follows:

"13. In K.K. Velusamy v. N. Palanisamy, the principles enunciated in Vadiraj have been followed, holding at paras 9 and 10: (K.K. Velusamy case, SCC pp. 281-82)

"9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate2.)

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it

may, of course, permit the parties to assist it by putting some questions."
(emphasis in original)

14. The rigour under Rule 17, however, does not affect the inherent powers of the court to pass the required orders for ends of justice to reopen the evidence for the purpose of further examination or cross-examination or even for production of fresh evidence. This power can also be exercised at any stage of the suit, even after closure of evidence. Thus, the inherent power is the only recourse, as held by this Court in *K.K. Velusamy* at para 11, which reads as follows: (SCC p. 282)

"11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications."

In this case the Applicants have set out why the second witness could not give evidence and also that the Defendant has now in its possession the original documents as more particularly set out in paragraph 17 of the Interim Application. Thus applying the principles laid down by the Supreme Court in *Ram Rati*, this is a fit case where reopening the evidence of DW-1 is necessary to advance the cause of substantial justice and ensure that the Defendant is given an opportunity to produce the best evidence. Further, no prejudice whatsoever would be caused to the Plaintiff, as the documents sought to be introduced are the very documents which were earlier intended to be proved through DW-2.

6. Accordingly, the Interim Application is allowed. The Defendant is permitted to file an additional affidavit of evidence of its first witness, Mr. Rohit Mehta, limited to proving the documents referred to in paragraph 17 of the Interim Application, in terms of prayer clause (b). Such affidavit shall be filed within a period of one week from today.

8. Stand over to **2nd December 2025** under the caption “For Directions.”

[ARIF S. DOCTOR, J.]