



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO. 2076/2025**

(YUNUS OPAI ABDUL AZIZ OPAI & OTHERS **VERSUS** M/S 4 WALL DEVELOPERS &  
ANOTHER)

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*Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders.*

*Court's or Judge's order*

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Shri M.R. Joharapurkar, counsel for the petitioners.  
None for the respondents, though served.

**CORAM : PRAFULLA S. KHUBALKAR, J.**

**DATE : NOVEMBER 14, 2025**

**FINAL ORDER :**

The petitioners have challenged the order dated 31.01.2025 passed by the trial Court rejecting the application for setting aside the order of closure of evidence of the plaintiffs.

2. In this petition, by order dated 17.04.2025, notices were issued and the petitioners were directed to deposit an amount of Rs.50,000/- in this Court to show their *bona fides*. The record reveals that the petitioners have deposited the amount of Rs.50,000/- in this Court. The respondents in this matter are served however, nobody has caused appearance on their behalf. By order dated 13.11.2025, one more of opportunity was granted to the respondents and the matter was adjourned for today. Accordingly, the matter is taken up for final disposal.

3. The short controversy involved in this petition is rejection of the petitioners' application for setting aside the order of closure of evidence. The petitioners are the legal representatives of the original plaintiff who had filed Special Civil Suit no.170 of 1999

seeking specific performance of contract and perpetual injunction. The petitioners' case in the civil suit is that they have paid the entire amount of Rs.2,50,000/- towards consideration of the flat, as described in the plaint. In order to prove their case, the plaintiffs desired to examine the Managing Partner of the defendant no.1, Sanjay Manohar Bhoot, and accordingly the plaintiffs took necessary steps for securing the presence of the witness in the civil suit. However, on account of their failure to take diligent action for securing the presence of the said witness, the evidence of the plaintiffs was closed. Therefore, the plaintiffs filed an application on 28.01.2025 at Exhibit 214 so that proper evidence is led and the suit is contested on merits. This application came to be rejected by the impugned order and the petitioners have raised challenge to the said order.

4. The learned counsel for the petitioners submitted that the petitioners have a very good case on merits since they have already paid the entire amount of consideration of Rs.2,50,000/- and they can establish a case seeking specific performance of the agreement to sell. It is submitted that only because of certain acts of inadvertence, there was failure to lead proper evidence at the relevant stage. However, the plaintiffs need not be deprived of their valuable right to lead evidence for a decision of the suit on merits. He also submitted that the plaintiffs desire to examine the Managing Partner of the defendant no.1 as witness to establish their entitlement for specific performance of contract, however, the said

witness avoided the service of summons and resultantly the plaintiffs' evidence was not proceeded. He submitted that the petitioners-plaintiffs desired to lead their evidence to establish their case on merits and therefore prayed for an opportunity to lead evidence by setting aside the order of closure of evidence.

5. The arguments canvassed by the counsel for the petitioners remain uncontroverted, as nobody appears for the respondents despite service.

6. It has to be seen that the trial Court has refused to set aside the order of 'no evidence' passed on 10.12.2024 and it has noted that the petitioners were present before the Court on 20.12.2024, 09.01.2025 and 17.01.2025 however, they did not take steps to file an application for setting aside the said order and on 28.01.2025 the application at Exhibit 214 was filed. By referring to several dates, the Court expressed opinion that the petitioners-plaintiffs were delaying the matter and not interested in leading their evidence.

7. A perusal of the record shows that *prima-facie* the conduct of the petitioners-plaintiffs is not diligent in prosecuting the suit. The reasons mentioned for not collecting the 'hamdast' from the Bailiff Section for effecting service of theailable warrant to the witness are not satisfactory. Apart from this, the conduct of the plaintiffs on earlier occasions also show that there was failure on their part to pay 'Bhatta' at the relevant time and resultantly, no diligence was shown by them in contesting the suit. However, not permitting a

party to lead evidence is a harsh step resulting into depriving the party from contesting the civil suit on merits. It is always desirable that the suits are decided on merits by affording a reasonable opportunity to both the parties. Although it is true that the parties are expected to be diligent to pursue their case, however, at the same time taking away the right of a party to lead evidence is a drastic order. In the instant case, considering the fact that the plaintiffs had already paid the entire amount of Rs.2,50,000/- towards consideration, the conduct on their part in not leading evidence cannot be considered to be deliberate and intentional, although it depicts a casual approach on the part of the plaintiffs. Considering the fact that the plaintiffs have already paid the entire amount of consideration, interest of justice demands that the plaintiffs be permitted to enforce their rights in the suit. It is also to be noted that the failure on the part of the plaintiffs to collect 'hamdast' from Bailiff Section for effecting service of bailable warrant cannot be made the basis to put the plaintiffs in such a disadvantageous position.

8. In view of the controversy involved, while issuing notices, this Court has directed the petitioners to deposit an amount of Rs.50,000/- to show their bona fides and the said amount is deposited by the petitioners. This fact shows that the petitioners have interest in securing an opportunity to lead evidence and contest the suit.

9. Having regard to the abovementioned factual and legal aspects, the interest of justice will be subserved by allowing the petitioners an opportunity to lead evidence, however by imposing certain costs in view of their casual approach. Hence, the following order is passed:-

- I. The writ petition is allowed. The order dated 31.01.2025 passed by the trial Court below application at Exhibit 214 is quashed and set aside subject to payment of costs of Rs.25,000/- to be paid by the petitioners-plaintiffs to the respondents-defendants.
  - II. Considering the fact that the amount of Rs.50,000/- is already deposited by the petitioners in this Court, they are entitled to withdraw the amount of Rs.25,000/- and the respondents are also entitled to withdraw the amount of costs by filing appropriate application.
10. The writ petition is accordingly disposed of.

**(PRAFULLA S. KHUBALKAR, J.)**