IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 13062 OF 2026

MADHUKAR HIMMATRAO SHINDE
VERSUS
SHYAMAPRASAD MUKHARJI SHIKSHAN SANSTHA THR VIJAY DAULAT PATIL

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Advocate for the Petitioner : Mr. Patil Vinod Prakash
Advocate for Respondent : Mr. M.K. Bhosale

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CORAM : SMT. MANJUSHA DESHPANDE, J.

DATE : 07.10.2026

PER COURT :

1. The petitioner is aggrieved by the order dated 18.08.2026 passed below Exhibit – 23, by the Deputy Charity Commissioner, Jalgaon, wherein, an application filed by the petitioner who is the Ex-Secretary of the Dr. Shyamaprasad Mukharji Shikshan Sanstha, Amalner, District Jalgaon. An application has been filed by the petitioner seeking recalling of a witness for cross-examination and the said witness was according to him necessary in view of the fraud played by the respondent. The application was opposed by respondent after considering the submissions of both the parties, the Deputy Charity Commissioner, Jalgaon rejected the application. While doing so the learned Deputy Charity Commissioner has considered the scope of the order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure and has also taken into consideration various decisions of the Hon'ble Supreme Court on the issue and has passed the order holding that the

powers to recall witness is not meant to permit a second opportunity to a party who has already availed full opportunity of cross examination.s

2. The learned Advocate for the petitioner submits that certain questions about the fact remains to be questioned by the applicant. If such questions are not put to the witness a great prejudice would be caused to his case. Therefore, in the interest of justice it was necessary to allow the application filed by the petitioner.

3. The submissions made by the learned Advocate for the petitioner are opposed by the learned Advocate appearing for the respondent contending therein that it is a settled position of law that the provision of recalling of witness is not intended to fill up the lacuna, which are left while examining the witness.

4. I have heard the respective parties and perused the impugned order.

5. An application has been filed for recall of witness for further cross-examination contending that certain material questions could not be put to the witness earlier, and therefore, for better adjudication of the case he wants to cross-examine his witness. While considering the application filed by the petitioner the learned Deputy Charity Commissioner has observed that

> *"Although the Court has powers to recall the witness at any stage as per the Order 18 Rule 17 of the Code of Civil Procedure, the law in this regard is clear. These are the discretionary*

powers of the Court which are required to be used springy. It is not intended to fill up the gap in the evidence by the party. Therefore, considering the settled principle it is not in the interest of justice to allow the application by recalling the witness since the party who has already availed an opportunity to cross-examination. As observed by the learned Deputy Charity Commissioner the object of the Order 18 Rule 17 of the CPC is intended to enable the Court to clarify the certain doubts by putting certain questions to a witness and it is not meant to permit the party to recall the witness for further cross-examination witness cross examination or to fill gaps in evidence.. Tge Courts felt it necessary by clarifying that the Court can recall the witness to be cross examine for examination of the party putting appropriate questions."

6. Since the power to recall a witness is a discretionary power and it is to be exercised only when such recall is necessary. I do not find any case for interference is made out by the petitioner, as such the Writ petition is devoid of merits and stands dismissed.

(SMT. MANJUSHA DESHPANDE, J.)

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