



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 13289 OF 2024**

**BHAGWAT ABHIMAN KOLI  
VERSUS  
SECRETARY MANAGER PIEM HOTELS LTD**

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Advocate for the Petitioner : Mr. Dharurkar Chaitanya V.

Advocate for Respondent : Mr. Yugant R. Marlapalle

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**CORAM : ABASAHEB D. SHINDE, J.**

**DATE : 20.02.2026**

**PER COURT:**

1. Heard learned counsel for the petitioner as well as the learned counsel for the sole respondent. By the present writ petition under Article 227 of the Constitution of India, the petitioner is challenging the order dated 10.04.2024 passed by the Joint Civil Judge, Junior Division, Jalna, passed below Exhibit 109 in Regular Civil Suit No.334/2014, by which the learned trial court has rejected the application tendered by the present petitioner who is original plaintiff for recalling of the witness.

2. Learned counsel for the petitioner submits that the said application tendered by the petitioner for recalling of the witness is

only to seek clarification with regard to the nomenclature of the hotel as to whether it is 'PM' hotels or the 'PIEM' hotels. Admittedly, the witness who is sought to be recalled has been examined and has even been subjected to cross-examination by the defendants.

3. With the assistance of the learned counsel for the petitioner as well as learned counsel for the respondent, I have gone through the Roznama of the proceedings of Regular Civil Suit No.334/2014 which depicts that the defendant's evidence was already closed on 29.09.2023 and the matter was posted for advancing argument. It is between that intervening period of closing the evidence of defendant and posting the matter for argument that this Application came to be filed on 19.03.2024. It is true that Order XVIII Rule 17 permits recalling of witness in certain contingencies. The relevant provision of Order XVIII Rule 17 reads thus :

**ORDER XVIII - Hearing of the suit and examination of witnesses :-**

**Rule 17. Court may recall and examine witness.**—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

4. I have gone through the order impugned passed by the learned trial court and I find that the learned trial court has taken a

plausible view while rejecting the application filed by the petitioner for recalling of the witness. I find that the learned trial court has rightly held that when the defendant himself has admitted that 'PM' hotels and 'PIEM' hotels are names of same company and only their pronunciation in Marathi language is different, in that view of the matter, there is no necessity for any clarification. The contingencies in which the application under Order XVIII Rule 17 for recalling of witness can be made has been considered by the Hon'ble Apex Court in the case of **Gayathri Vs. M. Girish; (2016) 14 SCC 142**, and more particularly in paragraph Nos.7 and 8 of the said judgment which reads thus :

"7. In K.K. Velusamy V. N. Palanisamy (2011) 11 SCC 275, while dealing with the power of the Court under Order 18 Rule 17, this Court held that:- (SCC pp.281-82, paras 9-10)

"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 Gogate - 2009 (4) SCC 410].

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 moto, 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)

And again:- (SCC pp.285-86, paras 19 & 21)

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

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21. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap.

The courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.”

We have referred to the said paragraphs to show the purpose of filing an application under Order XVIII Rule 17 of the Code. We may add that though in the said decision this Court allowed the appeals in part, the fact situation, the conduct of the party and the grievance agitated were different. The Court also thought it apposite to add a word of caution and also laid down that if the application is mischievous or frivolous, it is desirable to reject the application with costs.”

8. In this context, we may fruitfully refer to *Bagai Construction Through its proprietor Lalit Bagai v. Gupta Building Material Store*; (2013) 14 SCC 1. In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order XVIII Rule 17 that was rejected by the trial court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court. In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the Courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed:- (SCC p.7, para 15)

15. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two

applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

5. I thus find that this application, filed belatedly when the matter was posted for argument, is nothing but an attempt to protract the trial I therefore do not find any merit in the writ petition that warrants interference in the impugned order. The writ petition sans merits and the same is accordingly dismissed.

**(ABASAHEB D. SHINDE, J.)**

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