



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 WRIT PETITION NO.10420 OF 2025

Dayabhai Nenshibhai Shah Thr Gpa Holder Kaushik Dayabhai
Shah

VERSUS

Hirachand Nensibhi Shah Thr Lrs Hemali Hiren Shiyal And
Others.

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Advocate for the Petitioner : Mr. S.S. Bora

Advocate for Respondent 1A & 1B : Mr. S.S.Gangakhedkar

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 27, 2026

PER COURT :-

1. Petitioner impugns the order dated 22.7.2025 passed by the 4th Joint Civil Judge S.D., Nanded on application below Exhibit 202 in R.C.S. No.381 of 2011 thereby rejecting petitioner's application for recalling witness for the purpose of cross-examination.

2. Petitioner is original plaintiff in R.C.S.No.381 of 2011. Said suit is pending at the stage of evidence. It appears that Court Commissioner was appointed to record evidence of witness on behalf of the defendants. Petitioner could not cross examine said witness. Therefore, Commissioner passed 'no cross order' and submitted his report to the Court. In this background, petitioner moved an application below Exhibit-

202 seeking recall of witness Visanji Lodhaya and permit petitioner to cross-examine him. The application was opposed by the defendant no.1/1 by filing say. Trial Court was pleased to reject application. Hence, this writ petition.

3. Mr. Bora, learned advocate appearing for petitioner would submit that earlier proceeding was prolonged due to inaction on the part of defendants. Lateron, advocate Mr. D.M.Rakhe was appointed as Court Commissioner for recording evidence of defendant's witness Visanji Lodhaya. Meanwhile, petitioner changed Advocate and notice of Court Commissioner was served upon earlier advocate. As such, petitioner failed to attend proceeding before the Court Commissioner, which resulted into 'no cross' order.

4. Mr. Gangakhedkar, learned advocate appearing for respondents/defendants vehemently opposed the application. He would submit that it is not conceivable that petitioner was not knowing about the date of examination of witness by the Court Commissioner. He would further submit that application for recalling of witness is belatedly filed and there is no explanation for the same.

5. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that plaintiff has instituted suit for partition and separate possession in respect of residential house, which is a double storied building. Valuable right of parties are subjudice in suit. Defendant examined witness Visanji Lodhaya to prove the Will to establish his independent right in the suit property. If petitioner/plaintiff is not allowed to cross-examine witness on will, he would suffer irreparable loss.

6. In facts of the case, inconvenience caused to respondents can be compensated by imposing costs. In that view of matter, writ petition stands **allowed** in terms of prayer clause 'B' subject to condition that petitioner pays costs of Rs.10,000/- (Rs.Ten Thousand) to respondent no.1A and 1B and also deposits costs and charges of Court Commissioner within a period of four (4) weeks from today. In case of failure to deposit payment of cost, order dated 22.7.2025 passed by Jt. Civil Judge S.D. Nanded, below Exhibit- 202 will govern the proceeding.

(S. G. CHAPALGAONKAR, J.)

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