

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17549 OF 2025

Ashish Shrivastava & Ors

..Petitioners

Versus

Vishrut Enterprises Pvt Ltd & Ors

...Respondents

Mr. Onkar Gupte, for the Petitioners.

Mr. Suresh Sabrad, with Amey C Sawant, Neha Parte and Pratik
Sabrad, for Respondent Nos. 1 and 2.

CORAM: N. J. JAMADAR, J.

DATED : 8th JANUARY 2026

ORDER:

1. The Petitioners-Defendants have preferred this Petition assailing the order dated 8th October 2025 whereby the evidence of the Petitioners was closed, and the subsequent order dated 3rd November 2025 whereby the Applications preferred by Petitioner Nos. 1, 2 and 3 respectively, and the order dated 16th October 2025 whereby an Application preferred by the Petitioner No.4, for recall of the said order dated 8th October 2025, were also rejected.

2. The learned Civil Judge was persuaded to close the evidence of the Petitioners-Defendants as the Defendants were resorting to the dilatory tactics to delay the disposal of the suit, which has been directed

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to be decided by this Court in a time-frame. In the pursis which was filed on behalf of the Petitioners-Defendants, the Defendants had indicated the availability of two Defendants i.e., Defendant Nos. 22 and 24 on 15th October 2025 for the cross-examination and stated that there was no confirmation regarding the availability of the other Defendants for cross-examination on commission. Thus, the learned Civil Judge allowed the cross-examination of Defendant Nos. 22 and 24 and closed the evidence of other Defendants as they did not offer themselves for cross-examination.

3. The Petitioners-Defendants whose evidence was closed filed applications for recall of the said order. The learned Civil Judge rejected those applications by ascribing detail reasons. The various applications filed by the Defendants, including the permission to file the additional Written Statement, setting aside the no-cross order, to revoke the order of cross-examination of the Defendants witnesses on commission, permission to substitute the Affidavit in lieu of examination-in-chief already filed on behalf of the Defendants, were adverted to by the learned Civil Judge. On a cumulative analysis, the learned Civil Judge declined to recall the order of closing the evidence of the Petitioners-Defendants by observing that they were resorting to dilatory tactics.

4. Being aggrieved, the Petitioners have invoked the writ jurisdiction.

5. Mr. Gupte, the learned Counsel for the Petitioners-Defendants would submit that the Defendants have been deprived of a valuable right to adduce evidence. The trial Court has proceeded to close the evidence of the Defendants without providing an effective opportunity of hearing to them. It was submitted that though the Petitioners-defendants had then contended that there was no confirmation about the availability of those Defendants for cross-examination, yet, the Defendants are now ready to offer themselves for the cross-examination, on a date as may be directed by the Court. Thus, the impugned orders be quashed and set aside.

6. In opposition to this, Mr. Suresh Sabrad, the learned Counsel for the Plaintiffs, took the Court through the developments in the instant suit and the various strategies adopted by the Defendants to delay the disposal of the suit. In addition to the applications referred to by the trial Court in the impugned order, Mr Sabrad invited attention of the Court to the applications filed on behalf of the Defendants to frame 10 additional issues; which came to be rejected by an order dated 27th October 2025, the applications to recall the witnesses filed on behalf of the Defendants during the period of 7th November 2025 to 12th November 2025; which were also rejected, and the failure of the Defendants to advance arguments though the Suit was listed for final arguments on six dates. Mr. Sabrad further submitted that the trial Court was constrained to

hear the final arguments on behalf of the Plaintiff and, after conclusion of the oral submissions, the Plaintiffs have also filed written submissions.

7. Mr Sabrad would urge that, having regard to the conduct of the Defendants as manifested by the multiple efforts on the part of the Defendants to derail the trial in the suit, the impugned orders do not warrant interference at this stage.

8. Ordinarily, the Court leans in favour of providing an efficacious opportunity of hearing to the parties though there is an element of delay or lapse on the part of the parties. The lapses and defaults are condoned so as to advance the cause of substantive justice. In the case at hand, however one gets an impression that the Petitioners and other Defendants have adopted various litigative stratagem to delay the disposal of the suit.

9. Initially an endeavour was made to file additional Written Statement after filing the Written Statement on record. The said application was rejected by this Court and the Supreme Court declined to entertain the Special Leave Petition against the order passed by this Court. Thereafter, in view of default on the part of the Defendants, their right to cross-examine Plaintiffs witnesses was forfeited by the trial Court. This Court permitted the Defendants to cross-examine the Plaintiffs witnesses and adduce the evidence in the rebuttal. It is also imperative to note that as many as 26 witnesses were sought to be

examined by the Defendants. Out of them 20 witnesses have already been examined. The learned Civil Judge has noted the manner in which the recording of evidence was sought to be thwarted by seeking recall of the order directing recording the cross-examination of the Defendants witnesses, on commission.

10. Despite direction by the trial Court, the Defendants did not offer themselves for cross-examination before the Court Commissioner. Thus, when the trial Court ordered the Defendants to indicate their availability for cross-examination, the Petitioners-Defendants had the audacity to state that they cannot give confirmation about their availability for cross-examination. In these circumstances, the learned Civil Judge was fully justified in permitting the cross-examination of the two witnesses who offered themselves for cross-examination on the specified dates. As the Defendants chose not to confirm their availability for being cross-examined, in the backdrop of the dilatory conduct manifested by the Defendants, in general, the learned Civil Judge closed the evidence of the Defendants who did not offer themselves for cross-examination.

11. The subsequent events in the nature of the applications to frame 10 additional issues, recall the witnesses, and failure to advance final arguments, further exacerbates the situation and lends heft to the submissions on behalf of the Plaintiff that the entire approach of the

Defendants has been actuated by a design to delay the disposal of the suit.

12. Moreover, it is not the case that the Defendants have not adduced evidence. As many as 20 witnesses have already been examined on behalf of the Defendants. In the peculiar facts of the case, this Court is of the view that no injustice would be occasioned even if the Petitioners-Defendants right to adduce evidence is forfeited.

13. For the forgoing reasons, at this stage, when the suit is on the verge of final disposal, this Court does not find any justifiable reason to entertain the Petition.

14. Hence, the Petition stands dismissed.

[N. J. JAMADAR, J.]