

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4617 OF 2026

Prabhatsinh Jashwantsinh Parmar

..Petitioner

Versus

Bochasanwasi Shri Akshar Purushottam
Swaminarayan Sanstha, Public Charitable
Trust through its Trustees

...Respondents

Mr. Surel Shah, Sr. Advocate, a/w Ms. Anita Bhaktwani,
Mr. Ameya Mahadik, for the Petitioner.
Mr. Arun Mehta a/w Mr. Aniket Srivastav i/b Akshar Laws,
for the Respondent - Trust.

CORAM : N. J. JAMADAR, J.

DATE : 15th APRIL 2026

Oral Order :

1. Heard the learned Counsel for the parties.
2. The Court is informed that, the matter is at the stage of final arguments before the learned Civil Judge.
3. The controversy sought to be raised in the instant petition is covered by a judgment of this Court in the case of *Banganga Co-operative Housing Society Ltd. & ors. Vs. Vasanti Gajanan Nerurkar & ors.*¹, it reads as under:-

“22. The result of this discussion is that:

- (a) No Evidence Affidavit under Order XVIII, Rule 4 of the CPC can be allowed to be 'withdrawn'. It is evidence as soon as it is affirmed.

1 2015 (5) Bom. C.R. 813

(b) The Evidence Affidavit cannot contain matter that is irrelevant, inadmissible or both; or is in the nature of arguments, submissions or prayers. This is not 'evidence' as required by law. Were it to be attempted from the witness box, it would not be permitted; and hence it cannot be allowed to creep in merely because it happens to be placed on affidavit.

(c) It is permissible, and in fact often necessary, for a Court, with a view to expedition and to avoid a needlessly protracted cross-examination on irrelevancies and matter that is not 'evidence' to order that any such material that does not constitute evidence be struck off or be ordered or directed to be ignored without fear of adverse consequence.

(d) Where an Evidence Affidavit is filed and the witness or deponent, though otherwise available, is not made available for cross-examination, the well-established consequences in law will follow. Specifically, the opposite party will be entitled to submit that an adverse inference be drawn against such a witness or the party who fails to produce that witness for cross-examination; and, further, that should that evidence contain any admissions, these may be used by the other party; but so much of the evidence as is against the party entitled to cross-examination but which has gone untested for want of production of the witness will be liable to be ignored.

(emphasis supplied)

4. The issues of discarding the evidence or weight to be attached to the evidence of Kanhaiyyalal Ratilal Acharya, and the adverse inference to be drawn in regard to the evidence of Kanhaiyalal Ratilal Acharya, who had filed the affidavit in lieu of examination-in-chief but was not offered for cross-examination,

shall be decided by the learned Civil Judge keeping in view the aforesaid propositions and without being influenced by the observations in the order dated 04th April, 2026.

5. All contentions of all the parties are kept open for consideration.

6. The Writ Petition stands disposed.

[N. J. JAMADAR, J.]