

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5500 OF 2026

Vimsar Products Private Limited
Through its Director Mr Girish Sojatia
Plot No. 259 C & D, Sector-I, Industrial Area,
Pithampur, Dist Dhar,
Madhya Pradesh – 454 775.

..Petitioner

Versus

Ruchit Trading Private Ltd
Building No. 2-B, Shop No. 8, Ground Floor,
Jaihind Estate Coop Housing Society
Bhuleshwar, Mumbai – 400 002.

...Respondent

Mr. Yashodeep Deshmukh, i/b Pradip R Patil, for the Petitioner.
Mr. Yashpal Jain, with Pushpvijay Kanoji, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATE : 29th APRIL 2026

JUDGMENT:

- 1.** Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
- 2.** The challenge in this Petition is to the orders passed by the Commercial Court at Mumbai in Commercial Summary Suit No. 34 of 2023.

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3. The abovenumbered Commercial Suit has been instituted by the Respondent for recovery of the price of the goods sold and delivered by the Defendant to the Plaintiff. After the Petitioner-Defendant examined its first witness, the Petitioner filed Applications seeking *inter alia* permission to examine Pradeep Kumar Pandey as its second witness (Exhibit “52”), to exhibit the documents (Exhibit “53”) and also file the list of documents relied upon by the Defendants in its Written Statement (Exhibit “51”). The learned Judge, City Civil Court was persuaded to reject each of the applications by ascribing reasons.

4. I have heard Mr. Yashodeep Deshmukh, the learned Counsel for the Petitioner, and Mr. Yashpal Jain, the learned Counsel for Respondent, at some length. The learned Counsel took the Court through the pleadings and the material placed on record.

5. Mr. Yashodeep Deshmukh, the learned Counsel for the Petitioner, submitted that the learned Judge, Commercial Court has taken a very hypertechnical view of the matter. The documents, of which the list was sought to be produced by the Defendant, were already referred to and relied upon in the Written Statement and only the list of documents remained to be filed along with the Written Statement. The prayer to mark the documents; the printout of the WhatsApp chats and e-mails between the parties (Annexure 5 collectively), was also fully justifiable, the order passed by the Commercial Court marking the documents does

not deal with the documents at Annexure 5 collectively. The Defendant had proved those documents in evidence and, therefore, those documents ought to have been marked.

6. Mr. Deshmukh would urge that the refusal to permit the Defendant to examine Pradeep Kumar Pandey, as its witness for the only reason that the list of witnesses was not furnished by the Defendant was wholly erroneous. Since the Plaintiff had taken objection to the exhibition of the documents referred to in the examination-in-chief of the Defendant, i.e., casting reports, on the ground that the Defendant's first witness was not the author of the documents, the refusal to grant permission to examine Pradeep Kumar Pandey who signed the said casting reports was completely unjust. Mr. Deshmukh invited attention of the Court to the examination-in-chief of Defendant No.1 and the reason for which the said casting reports were declined to be exhibited by the Court.

7. Mr. Yashpal Jain, the learned Counsel for the Respondent, would submit that the Commercial Court has correctly appreciated the legal position in the matter of examination of the witnesses by the Defendant who has not furnished the list of witnesses in accordance with the directions in the case management hearing.

8. The repetitive applications preferred by the Defendant betrayed an intent to derail the hearing in the suit and delay the disposal of the

Suit. Thus to guard against such dilatory tactics, the Parliament has restricted rights of the parties to adduce evidence of witness whose Affidavits were not filed simultaneously in accordance with the directions in the first Case Management hearing. Attention of the Court was invited to Rule 4 of Order XVIII of the Code of Civil Procedure, 1908 (“the Code”) as inserted by the Commercial Courts Act, 2015.

9. Mr. Jain placed reliance on a decision of the Delhi High Court in the case of **Rajiv Sarin and Ors Vs Directorate of Estates and Ors**¹ and another judgment of Karnataka High Court in **Krishna Bhagya Jala Nigam Ltd & Ors Vs A Prabhakara Reddy and Anr**², to lend support to the submission that the course sought to be adopted by the Defendant was legally impermissible. It was further submitted that the name of Pradeep Kumar Pandey was never disclosed by the Defendant, as the person who was the author of the casting reports. Therefore, the order rejecting the application for permission to adduce the evidence of Pradeep Kumar Pandey does not warrant any interference.

10. As regards the rest two orders, Mr. Jain submitted that, the order passed by the Commercial Court on 20th March 2025 has already decided the issue of marking of the documents at Annexure 5 collectively. Since the documents which the Defendant sought to rely upon had already been marked in evidence, there was no propriety in

1 CS (COMM) 12 of 2021 decided on 19th January 2024.

2 WP No. 201900 of 2023, decided on 11th September 2023.

filing a list of documents when the trial has progressed, submitted Mr. Jain.

11. In regard to the prayer of the Defendant to mark the documents at Annexure 5 collectively, and permit the Defendant to file the list of documents, the submission of Mr. Jain carries substance.

12. By an order dated 20th March 2025, the learned Judge had declined to mark the said document ascribing justifiable reasons that those printouts of screenshots of WhatsApp and e-mails were photostat copies and not computer printouts and in the absence of a certificate under Section 65-B of the Indian Evidence Act, 1872, those documents could not be marked in evidence. (paragraph 6 of the order dated 20th March 2025). Likewise once the documents which were relied upon by the Defendant in the Written Statement, have already been marked in evidence, there was no propriety in again tendering a list of those documents.

13. In any event, these are procedural orders and there is no justifiable reason to interfere with such procedural orders in exercise of restricted supervisory jurisdiction, in view of the bar under Section 8 of the Commercial Courts Act, against entertaining any Revision Application against any interlocutory order passed by the Commercial Courts.

14. On the aspect of the examination of Pradeep Kumar Pandey as Defendant's second witness, however, this Court finds that the examination of the said witness appears to be necessitated on account of resistance on the part of the Plaintiff to the admission of the casting reports in evidence, which found favour with the Commercial Court.

15. By the order dated 20th March 2025, the learned Judge had declined to mark the copies of the casting reports on the ground of apparent inconsistencies in the claim of the Defendant as regards the author of those casting reports. It was *inter alia* noted that the casting reports appeared to be signed by Mr. Pandey.

16. In such a situation, in the considered view of this Court, the Defendant deserves an opportunity to adduce further evidence to substantiate the defence of the Defendant premised on the casting reports.

17. Undoubtedly, under the provisions of Order XVIII Rule 4 Sub-Rule (1A) of the Code, as amended by the Commercial Courts Act, 2015, the Affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filled simultaneously by that party at the time directed in the first Case Management hearing. Sub Rule (1B) of Rule 4 precludes a party from leading additional evidence unless sufficient cause is made out in the Application for that purpose and an order,

giving reasons, permitting such adduction of evidence is passed by the Court.

18. Evidently the aforesaid measure is to ensure the speedy disposal of the Commercial Suits by restricting the rights of the parties to examine further witnesses, whose Affidavits were not tendered in accordance with the directions issued in Case Management hearing.

19. In the case of **Krishna Bhagya Jala Nigam Ltd (Supra)**, the learned Single Judge of the Karnataka High Court held that unless exceptional grounds are made out for allowing further evidence or examination of further witness in terms of Sub-Rule (1B) of Rule (4) of Order XVIII of the Code, the Commercial Court cannot permit a person who is not named in the list of witnesses and whose Affidavit has not been filed within the time stipulated under Order 15A of the Code to adduce evidence.

20. There can be no quarrel with the aforesaid proposition. However, in a case of the present nature where the documents were refused to be marked on the ground that the Defendant's first witness through whom those documents were sought to be proved was not the author of those documents, slightly different considerations come into play.

21. It could be urged that the Defendant could have furnished the list of witnesses and filed the Affidavits of the proposed witnesses as well, anticipating the resistance to the marking of the casting reports.

However, that cannot be a reason for rejection of permission to adduce evidence where the Court has declined to mark the said document in evidence on the ground that those casting reports appeared to be signed by Mr. Pandey. Had the learned Judge, Commercial Court marked the said casting reports and ordered that they be read in evidence, examination of Pradeep Kumar Pandey, might not have been warranted.

22. In the considered view of this Court, in a case of the present nature, the embargo contained in Sub-Rule (1A) of Rule 4 Order XVIII cannot be applied with strict rigour.

23. Thus, the sufficiency of cause stems from the refusal of the Commercial Court to mark the copies of the casing reports in evidence on the ground that they appeared to be signed by another person, who was now sought to be examined as a witness, though he was initially not named as a witness.

24. I am, therefore, not persuaded to agree with the submission of Mr. Jain that the Defendant intended to examine Pradeep Kumar Pandey to fill in lacuna in the Defendant's defence. Resultantly, the Petition deserves to be partly allowed only in regard to the rejection of the Application to adduce evidence of Pradeep Kumar Pandey (DW2).

25. Hence, the following order:

: O R D E R :

- (i) Petition stands partly allowed.
 - (ii) The order passed by the learned Judge, Commercial Court rejecting the Application (Exhibit “52”) to adduce evidence stands quashed and set aside. The Defendant is permitted to adduce evidence of Pradeep Kumar Pandey (DW2).
 - (iii) The Defendant shall not seek any adjournment for the purpose of the examination of Pradeep Kumar Pandey (DW2).
 - (iv) The challenge to the order declining to exhibit the documents at Annexure 5 collectively, and permission to file list of documents stands rejected.
 - (v) Rule made absolute to the aforesaid extent.
- No costs.

[N. J. JAMADAR, J.]