



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2638 OF 2025

Rukmini Solvex Private Limited Company, Through its
Director, Rajkumar Shankarlalji Agarwal, Age: 62 Years,
Occ: Business, R/o Main Road, Gondia, Tahsil Gondia,
District Gondia – 441601.

PETITIONER

VERSUS

1. Rajkumar Motilal Shah (Dead) Proprietor Raj
and Raj Construction, Through LRs
- 1(A) Rajashree Rajkumar Shah, Age 76 yrs, Occ: Housewife.
- 1(B) Pritam Rajkumar Shah, Age 50 yrs, Occ: Business.
- 1(C) Shailesh Rajkumar Shah, Age 48 yrs, Occ: Business.
- 1(D) Mohini Tushar Shah, Age 52 yrs, Occ: Housewife.

All 1(A) to 1(D) R/o (I) Shimmer & Shine Apartment,
Block No.A-1, Flat No.1101, Opposite Santosh Hall,
Sinhagad Road, Pune – 411051.

(II) Survey No.23/1, Near Yash Motors, Anand Vihar
Colony, Canal Road, Hingne Khurd, Pune-411051.

2. M/s Raj & Raj Construction, Engineer and Government
Contractors, Through Director Shailesh Rajkumar Shah,
Survey No.23/1, Near Yash Motors, Anand Vihar Colony,
Canal Road, Hingne Khurd, Pune-411051.
3. State of Maharashtra, Through The Collector, Gondia.
4. The Executive Engineer, Medium Project Division,
Gondia, Office at – Civil Lines, Near Hanuman
Mandir, Gondia, District Gondia.

RESPONDENTS

Shri Vinay V. Sharma, counsel for the petitioner.
Shri S.S. Shahane, counsel for the respondent nos.1(A) to 1(D).
Ms P.T. Joshi, Assistant Government Pleader for the respondent no.3.
Shri N.M. Gaidhane, counsel for the respondent no.4.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : JANUARY 22, 2026

DATE ON WHICH JUDGMENT IS PRONOUNCED : MARCH 27, 2026

JUDGMENT

RULE. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner has assailed the order dated 29.03.2025 and 24.04.2025 passed in Commercial Suit no.2 of 2021 by the Court of District Judge-2, Gondia.

3. The petitioner is the original plaintiff, which has filed a suit for specific performance of contract and recovery of money. The suit was originally registered as Special Civil Suit no.28 of 2014 before the Court of Civil Judge (Senior Division), Gondia. In this suit, the defendants appeared and filed their written statements. However, considering the nature of the suit, it was transferred to the Commercial Court, Gondia on 26.10.2021 and then it is re-numbered as Commercial Suit no.2 of 2021. The plaintiff led its evidence so also the defendants led their evidence and filed their evidence closing pursis on 29.01.2025. Thereafter, on 12.03.2025, the defendant nos.1 and 2 filed an application for permission to file documents on record. The plaintiff opposed this application by filing its reply and after hearing the parties, the trial Court passed an order on 29.03.2025 (Annexure-G), by which the application came to be allowed. The plaintiff then filed an application for review of this order, which came to be rejected by order dated 24.04.2025 (Annexure-J). Feeling aggrieved by these orders, the plaintiff has filed the instant petition.

4. Shri Vinay Sharma, learned counsel for petitioner submitted that the impugned orders are unsustainable in law being passed without considering the fact that there existed no sufficient cause with the defendant nos.1 and 2 to file the documents at the stage of final arguments of the suit. He also submitted that the defendants failed to give any reasonable or convincing explanation for not filing the said documents along with their amended written statement, even though the documents were in the knowledge and possession of the defendants. He submitted that provisions of Order XI rule 10 of the Code of Civil Procedure, 1908 (for short, 'the Code') required the defendants to file the documents along with the written statement and since the defendants failed to file the documents at the relevant time, the attempt to file the documents at the fag end of the trial causes serious prejudice to the rights of the plaintiff.

5. In support of his submissions, learned counsel for the petitioner placed reliance on the judgment of the Principal Seat of this Court in ***Bank of Baroda Versus Gujarat Cables and Enamelled Products Pvt. Ltd.*** [Writ Petition No.11329 of 2022] wherein the Coordinate Bench of this Court has upheld the order passed by the trial Court which has refused leave to file documents which were not earlier filed on account of inadvertence of the parties. By pointing out the legal position, he submitted that in absence of any reasonable cause for not filing the documents along with the written statement, the permission to file the documents after the stage of evidence is impermissible.

6. Per contra, Shri S.S. Shahane, learned counsel for the respondents nos.1(A) to 1(D) vehemently submitted that there is no illegality with the impugned orders, allowing the defendants to file the relevant documents on record. He submitted that in view of the stand taken by the defendants in the written statement, the documents to be produced are material documents which are necessary for deciding the actual controversy involved in the suit. He submitted that the defendants have already incorporated pleadings with respect to these documents and since the documents, although material, have not been filed by the plaintiffs, the defendants nos.1 and 2 are entitled to place them on record. He submitted that the plaintiff had acted in collusion with the defendant nos.3 and 4 and all of them failed to produce these relevant documents on record, which compelled the defendant nos.1 and 2 to seek permission to file the documents on record. He submitted that the defendant nos.1 and 2 had obtained these documents under the Right to Information Act, 2005 which are with respect to the reports of enquiry about excess billing and tender agreements bearing bogus signatures and they are necessary for deciding the entire controversy involved in the suit. He also submitted that during pendency of the suit the plaintiff had also filed a bunch of documents along with the list of documents dated 12.06.2023 and another set of documents on 25.06.2024. He therefore submitted that in view of provisions of Order XI Rule 10 of the Code, the trial Court had rightly granted leave to the defendants to file the documents by considering the reasonable cause set out in the application.

7. In support of his contentions, he placed reliance on the judgment of the Principal Seat of this court in ***Vaijanath Dayanand Kale & Others Versus Nerkar Properties LLP & Others*** [2021(3) Mh.L.J. 202] and submitted that considering the nature of scheme of the Commercial Courts Act, 2015 the interference with the interlocutory orders passed by the Commercial Court is restricted only to the exceptional cases showing patent jurisdictional errors. By referring to the position of law, he submitted that the impugned orders passed in the instant case do not suffer from any patent jurisdictional error warranting interference.

8. Rival contentions, thus, fall for my consideration.

9. The controversy involved in the instant petition is about challenge to the orders passed by the Commercial Court allowing production of documents by the defendant nos.1 and 2. The relevant provisions of law in this regard are found in Order XI Rules 7 and 10 of the Code, which are **amendments to the Code in its application to the commercial disputes**, which are reproduced below:

“Order XI Rule 7. The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, alongwith the written statement or with its counter-claim if any, including --

Order XI Rule 10. Save and except for sub-rule (7)(c)(iii), defendant shall not be allowed to rely on documents, which were in the defendant’s power, possession, control or custody and not disclosed alongwith the written statement or counter-claim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure alongwith the written statement or counter-claim.”

10. A perusal of these provisions shows that the defendants are required to file the documents, which are in their power, possession, control or custody along with the written statement. However, in case where the documents were not disclosed along with the written statement, the defendants shall not be allowed to rely upon those documents except with the leave of the Court. It is also provided that such leave shall be granted by the Court only upon the defendants establishing a reasonable cause for non-disclosure along with the written statement.

11. In the instant case, the defendants nos. 1 and 2 had filed application (Exhibit 259) to produce several documents on record, which are in the nature of tender agreements and the reports of enquiry made by the Executive Engineer, Bhandara in the year 2017. Pertinent to note, the defendant nos.1 and 2 have incorporated pleadings about the said documents in their written statement. In the application for permission to file documents, it is stated that the defendants nos. 1 and 2 believed and expected that the defendant nos.3 and 4 being officials of the Government of Maharashtra would produce the documents, however, on their failure, the defendant nos.1 and 2 obtained the documents under the Right to Information Act, 2005 and sought for permission to place them on record. In its application, the defendant nos.1 and 2 stated reasons for not filing the documents earlier and pointed out the necessity to file those documents on record. Although the application was opposed by the plaintiff and the defendant nos.3 and 4, after giving due consideration to the pleadings on record, the trial Court has allowed the application.

12. It has to be thus noted that the trial Court has recorded its inference that the documents are necessary for adjudication of the controversy involved in the Commercial Suit. The reasons mentioned in the application are found to be constituting reasonable cause for the Court to grant leave as per Order XI Rule 10 of the Code. As such, it is clear that the trial Court has recorded its satisfaction about the reasons put forth by the defendant nos.1 and 2 and has positively exercised the discretion to allow them to file the documents on record. The order dated 29.03.2025 passed by the trial Court, allowing the application was maintained by the trial Court while passing the order on review application and by considering the position of law laid down in the judgments relied upon by the parties, the application for review was also rejected by order dated 24.04.2025.

13. Pertinent to note, the defendant nos.1 and 2 have already incorporated the pleadings about the documents in their written statement. During pendency of the suit, the plaintiff has also filed about 45 documents in support of its case. Although the application for permission to file the documents was filed after the evidence of parties was over, however, it has to be noted that the trial Court has found the documents to be necessary for adjudication of the controversy involved in the suit. It is also desirable that the case is decided on merits and therefore allowing a party to file certain documents having relevance, cannot be considered to be prejudicial to the rights of the other party. It is also crucial to note that the defendant nos.1 and 2 had earlier given a 'Notice to produce the documents' dated 05.07.2024, calling upon the

parties to produce the documents of entire tender correspondence between the plaintiff and the defendant no.4, however, in response thereto, the documents were not produced by the plaintiff. In this background, the trial Court has permitted the defendant nos.1 and 2 to place on record the documents by passing the well reasoned orders. It has also be noted that mere filing of documents will not cause prejudice to the rights of the plaintiff since the plaintiff is entitled to controvert the contentions based on those documents, either by way of arguments, or by way of cross-examination.

14. On giving anxious consideration to the entire controversy involved in the instant petition, it has to be noted that the trial Court has allowed the application by considering the factual aspects and by applying the position of law with respect to Order XI Rule 10 of the Code. The trial Court has found the reasons mentioned in the application to be a reasonable cause for granting leave to file the documents. The reasons recorded by the trial Court in the impugned orders do not appear to be perverse or palpably erroneous warranting interference under Article 227 of the Constitution of India. The writ petition therefore deserves to be dismissed and the same is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)