2026:BHC-AS:20317

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3109 OF 2026

Amines And Plasticizers Limited ***....Petitioner***

: Versus :

APL Holdings and Investments Limited ***....Respondent***

WITH

WRIT PETITION NO. 3128 OF 2026

Amines And Plasticizers Limited ***....Petitioner***

: Versus :

APL Investments Limited ***....Respondent***

Mr. Girish S. Godbole, Senior Advocate with Mr. Haaris Koradia i/b Sujit Lahoti & Associates, for Petitioner in WP/3128/2026.

Mr. Nirman Sharma with Mr. Haaris Koradia i/b Sujit Lahoti & Associates, for Petitioner in WP/3109/2026.

Mr. Gaurav Joshi, Senior Advocate with Mr. Gaurang Mehta, Ms. Neelam, Ms. Namita Shirke & Ms. Vanita Shinde i/b Mr. Jaydeep Thakkar, for Respondent in both the Petitions.

CORAM : SANDEEP V. MARNE, J.

Reserved On: 17 April 2026.

Pronounced On: 28 April 2026.

Judgment :

1) These two petitions are filed by the Petitioner-licensee challenging the orders dated 3 January 2026 passed by the Appellate Bench of the Small Causes Court rejecting the Revisions filed against

the orders passed by the Trial Court on 20 September 2025 by which applications filed by the Petitioner seeking permission to lead further evidence of D.W.1 and for production of additional documents were rejected by the Trial Court. The orders passed by the Appellate Bench on 3 January 2026 was subjected to review at the instance of the Petitioner and Review Petitions are rejected by orders dated 7 February 2026, which are subject matter of challenge in the present petitions.

2) Two office premises admeasuring 2490 sq.ft and 2821 sq.ft. on the North and South Wing respectively on 6th floor of D-building in Shiv Sagar Estate situated at Dr. Annie Besant Road, Worli, Mumbai are the '**suit premises**' in L.E.& C. Suit No. 132/178 of 2009 and L.E. & C. Suit No. 136/182 of 2009 respectively filed before the Court of Small Causes at Mumbai. Plaintiff-Respondent is the owner of the suit premises. By Agreements of Leave and License dated 29 March 1997, Plaintiff permitted Petitioner-Defendant to use and occupy the suit premises. The period of license was for 3 years, which was renewable by further period of 3 years. The first period of license expired on 30 April 2000/31 January 2000. According to the Defendants, the same was renewed from 1 May 2000/1 February 2000 to 30 April 2003/31 January 2003. It is also the case of the Defendant that the license was further renewed from 1 May 2003/ 1 February 2003 to 30 April 2006/31 January 2006 being the second renewal. Even after expiry of second renewal period on 30 April 2006/31 January 2006, Defendant continued to occupy the suit premises. The initial license fees were agreed in respect of both the premises as Rs.30,000/- per month which according to the Plaintiff was increased to Rs.48,400/. The Defendant had paid the license fees upto October 2008.

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3) Plaintiff has instituted two suits for recovery of both the suit premises in the Court of Small Causes at Mumbai. The Defendant resisted the suits by filing Written Statements taking a defense *inter-alia* of irrevocable license. Defendant claimed that it is in possession of the suit premises since the year 1974. Defendant has also raised the defense of Plaintiff being a subsidiary company of the Defendant formed for acquisition of assets. The Defendant has also raised the defense of permanently altering the character and layout and incurring of huge expenditure on the suit premises.

4) Issues were framed in the suits based on the pleadings on 23 April 2012. Issue No.2 in both the suits is about the Defendant carrying out work of permanent character in the suit premises. Plaintiff filed Affidavit of Evidence of its witness on 30 August 2013. The cross-examination of Plaintiff's witness went on from August 2013 to 15 January 2018. Plaintiff filed evidence closure purshis on 6 March 2019. Defendant filed affidavit of evidence of its witness Mr. Hemant K. Ruia (Chairman and Managing Director of the Defendant). Cross-examination of Defendant's witness was conducted from 4 March 2025 to 30 April 2025. On 8 April 2025, Defendant filed evidence closure purshis. The suit was accordingly fixed for final arguments. However, on 28 April 2025, Defendant tendered a purshis expressing desire to file applications to bring on record additional evidence. The Suits were adjourned to 27 June 2025 on which day, Defendant filed applications under Order 18 Rule 17 read with Section 151 of the Civil Procedure Code, 1908 **(Code)**. The applications were numbered as Exhibit-89 in Suit No. 136/182 of 2009 and Exhibit 93 in Suit No. 132/178 of 2009. This is how Defendant sought recall of witness Mr. Hemant Ruia and for

production of documents, bills, etc. Plaintiff opposed the applications by filing reply. Defendant filed a rejoinder. The Trial Court proceeded to reject the applications by order dated 20 September 2025. Petitioners preferred Revisions against the decision of the Trial Court before the Appellate Bench of the Small Causes Court bearing Revision Application Nos.272/2025 and 273/2025. Both the Revisions came to be dismissed by separate Orders passed by the Appellate Bench on 3 January 2026. Petitioners sought review of orders dated 3 January 2026 passed by the Appellate Bench by filing Review Applications Nos. 1 of 2026 and 2 of 2026. By orders dated 7 February 2026, both the Review Applications are rejected by the Appellate Bench. Aggrieved by non-grant of opportunity to recall D.W.1 and to produce additional documents, Petitioner-Defendant has filed the present petitions.

5) Mr. Godbole, the learned Senior Advocate appearing for the Petitioner submits that both the Courts have concurrently erred in not granting an opportunity to the Petitioner to lead additional evidence of D.W.1 for proving the bills in respect of expenditure incurred in altering the suit premises. He submits that D.W.1 has also produced ledger of Books of Accounts containing various expenses which is marked in evidence. However, due to sheer inadvertence, the Defendant did not produce the supporting bills for incurring of the expenditure. That Defendant was in search of the bills but the same were not readily available at the time when examination of D.W.1 was complete. That after conducting rigorous searches, the Defendant has ultimately found the relevant bills. That therefore the Defendant needs to be granted an opportunity to lead evidence in respect of both the bills for which the ledger is already produced and marked in evidence. That the

applications for recall of D.W.1 were filed with utmost alacrity. That the evidence closure purshis was filed on 8 April 2025 and that immediately on 28 April 2025, Defendant sought leave to file application for recall of D.W.1 and to produce evidence. That this shows that the intention behind seeking recall of D.W.1 is not to delay the suit. He submits that Issue No.2 relating to work of permanent character in the suit premises is already framed and Defendant must be given full opportunity to lead evidence on the framed issue. That additional evidence can be completed in a time bound manner without causing any further delay in decision of the suits. That Plaintiff himself took a long time from 2013 to 2019 to complete its evidence. That therefore Defendant cannot be blamed for pendency of the suit. He relies on judgment of the Apex Court in ***K.K. Velusamy Versus. N. Palanisamy***[1] in support of his contention that parties must be given opportunity to lead additional evidence if the same is discovered during the time gap between completion of evidence and hearing of arguments. That in the present case, the arguments were yet to commence when the application for leading additional evidence was filed. He submits that the Trial and the Appellate Courts could have imposed condition of payment of costs and ought to have allowed the applications filed by the Defendant on instructions. He makes a statement that Defendant is willing to pay costs of Rs.5,00,000/- in each of the suit with a view to demonstrate *bonafides* without prejudice to the contention that the Defendant is entitled to recall D.W.1 as a matter of right for proving the bills of incurring of expenditure.

1 2011 (11) SCC 275

6) Mr. Godbole submits that the Appellate Court has decided merits of the case by holding that the license in the present case cannot be irrevocable. That while deciding the application for leading of additional evidence by recall of D.W.1, the Appellate Court could not have touched upon merits of the case. That the Appellate Court has also erred in holding that no averments are made in the written statement about the alleged bills. He submits that an averment relating to incurring of expenditure is sufficient and it is not necessary to give details of evidence in the pleadings.

7) The Petitions are opposed by Mr. Joshi, learned Senior Advocate appearing for the Respondent/Plaintiff. He submits that there are concurrent findings recorded against the Petitioner by the Trial and Appellate Courts which do not warrant any interference in exercise of writ jurisdiction by this Court. That the applications were filed with the clear aim of delaying the suits, which are pending since the year 2009. That Petitioner is merely a licensee who is latching on to possession of the suit premises for the last 19 long years and is deliberately attempting to delay decision of the suit. He submits that the defence of incurring of expenditure of carrying out works in the premises has been taken in the Written Statement filed in the year 2009 and the Defendant had ample time to produce evidence to prove its defense. That the Defendant's witness was in the box for a long time from 4 June 2019 to 3 April 2025 and it is impossible to believe that during these 6 years, Defendant did not make any efforts to search the alleged bills. That therefore the bogey of conducting searches in respect of the bills after filing of evidence closure purshis, apart from not being pleaded in the applications, is otherwise totally false.

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8) Mr. Joshi submits that the only reason pleaded in the applications was inadvertence and the case is now sought to be improvised by pleading the theory of due diligence directly before this Court in the memo of the present petitions. That no pleadings relating to due diligence were raised before the Trial Court in the applications. He relies upon judgment of the Apex Court in ***M/s. Bagai Constructions Versus. M/s. Gupta Building Material Store***[2] contending that in similar circumstances, the Apex Court did not permit production of bills after completion of evidence and final arguments. In support of the contention that there is no pleading of due diligence in the application, Mr. Joshi relies on judgment of this Court in ***Mr. Pralhad Chavatrao Lawand Versus. Parvati Mahila Gramin Sahakari Pathasanstha Maryadit and another***[3]**.** He relies on judgment of this Court in ***Ashok Lalta Pandey and another Versus. Zarina Abdullah Janai and others***[4] in support of his contention that once the evidence is closed, it is impermissible to grant further opportunity to lead evidence when opportunities earlier available are not availed. Relying on judgment of this Court in ***Prabhakar Yeshwant Ranade Versus. Gajanan Narayan Adivarekar***[5] he submits that mere non-cause of prejudice cannot be a reason for allowing the application for leading of additional evidence under Order 18 Rule 17A.

9) Mr. Joshi submits that Defendant is occupying large commercial premises admeasuring 2821 sq.ft and 2490 sq.ft (5311 sq. ft i.e 2821 sq. ft. + 2490 sq.ft) at a prominent location at Worli, Mumbai where the rent is in excess of Rs.200 per sq.ft (over Rs.10,00,000/- per

2 AIR 2013 SC 1849
3 Writ Petition No. 15440 of 2023 decided on 11 December 2023
4 2018 4 ALL MR. 646
5 Writ Petition No. 1933 of 1983 decided on 5 December 1991

month). However, the Defendant is occupying the premises by paying paltry sum of Rs.48,400 x 2 = Rs.96,800/-. That delay in decision of the suit ensures to the benefit of the Defendant. He prays for dismissal of the petitions.

10) Rival contentions of the parties now fall for my consideration.

11) The suits are filed by the Plaintiff for recovery of possession of licensed premise. Plaintiff relies on Leave and License Agreements dated 29 March 1997 by which license was granted in respect of large commercial premises admeasuring 2821 sq.ft and 2490 sq. ft at a prominent location in Worli, Mumbai. The initial license fees were Rs. 30,000/- per month and the license period was for a period of 3 years renewable for a further period of three years. It appears that there are two renewals, and the license has finally expired on 30 April 2006/31 January 2006. There is nothing on record to indicate that the licenses have been renewed after 30 April 2006/31 January 2006. Plaintiff has sought recovery of possession of the premises on account of expiry of the license.

12) The Defendant has raised various defenses to oppose the suits such as purchase of the licensed premises by the Defendant in the name of the Plaintiff, grant of perpetual license, incurring of huge expenditure on changing the nature of premises and in improving the same, etc. Accordingly, Issue No.2 has been framed as under:

> "Does defendants prove that in pursuant to the terms and conditions in the agreement executed in between them and the

plaintiff, they carried out work of permanent character in the suit premises"?

13) Defendant has thus taken a defense of incurring of huge expenditure for construction of cabins, partitions and for making additions and alterations to the furniture and fixtures and for redecoration of the suit premises. Defendant thus had time since the year 2009 to collect all the evidence required to prove the said defense. After framing of issues in both the suits on 23 April 2012, the trial commenced by leading of evidence by the Plaintiff on 30 August 2013.

14) After completion of evidence of Plaintiff, the Defendant commenced leading its evidence by filing affidavit of evidence of its Chairman and Managing Director, Mr. Hemant K. Ruia. By the time Affidavit of Evidence of D.W. 1 was filed, a period of 10 long years had elapsed from the date of filing of the written statement. The Defendant thus had ample time to produce all the evidence necessary for proving the defense of incurring of alleged expenditure in renovation of the suit premises. D.W.1 produced and proved copy of computerized printout of Books of Accounts covering various expenses, which is marked as Exhibit 79 in the evidence. The ledger contains details of entries of expenditure incurred on various items of furniture, civil work, carpentry work, electrical work etc. The ledger is in respect of the expenses incurred from the years 2002 to 2009. It is not necessary to delve deeper into the relevancy of the said ledger entries at this juncture. Suffice it to observe that the Defendant had ample opportunity of producing supporting bills for proving the evidence of incurring of expenditure in the licensed premises.

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15) The cross-examination of D.W.1 was completed on 3 April 2025. The Defendant accordingly filed evidence closure purshis on 8 April 2025. It is Defendant's case in the Petitions that an extensive search was conducted in the office when Defendant came across the bills of civil contractor, Babubhai V. Rathod. However, this particular pleading is not to be found in applications at Exhibits 89 and 93. Thus the Petitioner has improvised the case in the Petition. Beyond pleading the pretext of 'inadvertence', the Defendant did not cite any other reason nor demonstrated due diligence for seeking recall of D.W.1. It is also seen that an altogether different story is now sought to be pleaded in para-3.12 and 3.13 of the Petitions relating to conduct of searches, which was never pleaded in the applications at Exhibits 89 and 93. Mr. Godbole has sought to contest this position by inviting the attention of the Court to averments in para-5 of the Applications (Exh. 89 & 93), in which the Petitioner pleaded thus:

> 5. I say that in the aforesaid circumstances, the present Application is being made on behalf of the Defendant seeking liberty and/or permission to led further Evidence by recalling DW-1 i.e., myself on the defense of "Irrevocable License". **I submit that, due to inadvertence, the relevant evidence was not brought on record earlier. The Defendant was in search of bills in respect of civil works carried out in the Suit premises for which payments were made as partially evidenced.** However, the complete details of the said bills and the corresponding payments are yet to be submitted.
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> *(emphasis added)*

16) However, Para 5 of the applications did not state that searches were conducted after closure of evidence and the bills were found. It was pleaded that '*the Defendant was in search of bills in respect of civil works …*' Thus, in addition to the reason of inadvertence, the Petitioner did not plead that the search of bills was conducted after

closure of evidence and during such search, additional evidence was found.

17) Under Order 18 Rule 17 of the Code, the Court can recall and examine the witness. The provision reads thus:

> **17. Court may recall and examine witness.**
>
> The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

18) Order 18 Rule 17 of the Code confers powers on the Court to recall and examine the witness. It is essentially Court's own power, though the Court can be urged by a party to exercise the same. Under Order 18 Rule 17A of the Code, there was a provision for production of evidence, not previously known or evidence which could not be produced despite due diligence. However, the provision under Order 18 Rule 17A has been deleted w.e.f. 1 July 2002. Thus, a party desiring to recall witness to produce additional evidence has to rely on provisions of Order 18 Rule 17 or it needs to invoke Court's inherent powers Section 151 of the Code.

19) The power under Order 18 Rule 17 is not intended to be used routinely. It is only in a rare case where the Court arrives at a conclusion that recall of witness would assist it in clarifying the evidence on the issue and in rendering justice that the Court can exercise powers Order 18 Rule 17 of the Code. The power is not intended to give an opportunity to parties to fill up lacunae in evidence or to seek recall of witness at any point of time which results in delaying decision of the suit.

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20) There are several judgments where Courts have denied opportunity to recall witness for producing additional evidence when recall is sought to fill up gaps in evidence and when evidence was found to be available with the party. The facts in the case before the Hon'ble Apex Court in ***M/s. Bagai Constructions*** (supra) were almost similar, where bills were sought to be produced by seeking recall of the witness though the account statements were produced earlier. The Apex Court has held in para-11 as under:

> 11. **The perusal of the materials placed by the Plaintiff which are intended to be marked as bills have already been mentioned by the Plaintiff in its statement of account but the original bills have not been placed on record by the Plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the Plaintiff but for the reasons known to it, still the Plaintiff has not placed these bills on record.** In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the Plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. **As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the Plaintiff as to why these documents were not placed on record by the Plaintiff during the entire trial.** Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the Plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. **Though power Under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of Code of Civil Procedure, the Plaintiff cannot be permitted.**
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> *(emphasis and underlining added)*

21) The case in ***M/s. Bagai Constructions*** also involved seeking recall of witness to prove bills when only account entries were earlier produced and therefore the judgment squarely applies to the facts of the present case. Here also the Bills were available with the Petitioner/Defendant, who negligently did not produce the same despite having 16 long years to search the same. Mr. Godbole has sought to distinguish the judgment by contending that the arguments therein were concluded. In my view the said factor is irrelevant as the arguments were to commence in the present case, which got derailed because of filing of applications by the Petitioner/Defendant. The judgment in ***M/s Baghai Constructions*** is an authority on the issue that if the evidence is available with the party, the same cannot be permitted to be produced by seeking recall of witness or by reopening of evidence by having recourse to provisions of Order 18 Rule 17 or Section 151 of the Code. Like in ***M/s Baghai Constructions***, Petitioner/Defendant has relied on ledger entries by producing the same. The bills were available with it, but it chose to rely on only the ledger entries. Now the evidence cannot be reopened to produce evidence which was consciously not produced earlier.

22) In ***K.K. Velusamy*** (supra) the Apex Court has held that the power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely and merely for the asking. It is held that if the power is so used, it will defeat the very purpose of various amendments to the Code to expedite trials. Mr. Godbole has however relied on the judgment in ***K. K. Velusamy*** in support of contention that if there is time gap between completion of evidence and hearing of arguments and if in the interregnum, the party comes across some

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evidence which he could not lay hands on earlier, the Court can exercise powers under Section 151 of the Code and permit production of evidence if it is relevant and necessary in the interest of justice by imposing such terms as the Court deems fit to impose. The Apex Court has held in paragraphs 14 and 19 of the judgment as under:

> 14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.
>
> 19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

23) In my view however the judgment of the Apex Court in ***K. K. Velusamy,*** far from assisting the case of the Petitioner, actually militates against it. The present case does not involve a situation where

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the Defendant has come across evidence which it could not lay his hands earlier or some evidence in regard to the conduct or action of the other party has come into existence after filing of evidence closure purshis. The Defendant always possessed the bills, but took no efforts in producing the same. The fact that the pretext of inadvertence is raised contains an admission that the evidence was available but the same was inadvertently not produced. There are no pleadings in the Applications to indicate as to how Defendant was prevented from accessing the Bills pertaining to period from 2002 to 2009. Also, the judgment in ***K. K. Velusamy*** is discussed and explained by this Court in couple of judgments, which are discussed in the paragraphs to follow.

24) The judgments in ***M/s. Bagai Constructions*** and ***K. K. Velusamy*** are discussed by a Single Judge of this Court (*G. S. Kulkarni J.)* in ***Ashok Lalta Pandey*** (supra) in which it is held as under:

> 14. In regard to the contention as urged on behalf of the petitioners relying on the decision of the Supreme Court in ***K.K. Velusamy v. N. Palanisamy*** (supra) it cannot be disputed that the Court would have ample power under Order 18, Rule 17 read with section 151 of the Code of Civil Procedure to recall any witness either the Court exercising the power on its own motion or on an application which may be filed by one of the parties to the suit, however, the Supreme Court has observed that "the power is discretionary" and should be used "sparingly in appropriate cases" to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. In paragraph 12 of the decision, the Supreme Court observed that section 151 of the Civil Procedure Code cannot be routinely invoked for reopening of the evidence or recalling witnesses. In summarizing the law in that regard in sub-paragraph (f) of paragraph 12 the Court held that the power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court. In paragraph 15, the Supreme Court has held that there can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code, even if such an application is made before the

conclusion of the arguments. However, the caveat which has been imposed as observed in paragraph 19 is that the application should be found to be bona fide and where additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice and the court is satisfied that non-production earlier was for valid and sufficient reasons, only then the court may exercise its discretion to recall the witnesses or permit fresh evidence by exercising power under section 151 or Order 18, Rule 17 of the Code of Civil Procedure. At the same time, it is held that if the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, such an application should be rejected. It also cannot be overlooked that from the facts of the said case before the Supreme Court and as recorded in paragraph 4 of the decision that the issue did not pertain to a case where the evidence was closed. In fact the narration of facts in paragraph 4 of the decision would indicate that the conversation was recorded on 27 October, 2008 which was subsequent to filing of the written statement on 12 September, 2007 and before the arguments could commence which commenced on 11 November, 2008 and the issue was in relation to electronic evidence. Thus, in my opinion, learned trial Judge would not be in an error to observe that this decision would not be applicable in the facts of the present case.

15. The respondents would be well advised in relying on the decision of the Supreme Court in the case of ***Salem Advocate Bar Association, T.N. v. Union of India*** (supra) wherein the Supreme Court considering the powers of the Court under Order 18, Rule 17 of the Civil Procedure Code and deletion of Rule 17A has held that it would be the duty of the court to see that unnecessary applications are not filed and for such applications the provisions of Rule 17 are not invoked. The Court in paragraph 21 has observed thus:

> "21. We find that in the Code of Civil Procedure, 1908, a provision similar to Rule 17-A did not exist. This provision, as already noted, was inserted in 1976. The effect of the deletion of this provision in 2002 is merely to restore status quo ante, that is to say, the position which existed prior to the insertion of Rule 17-A in 1976. The remedy, if any, that was available to a litigant with regard to adducing additional evidence prior to 1976 would be available now and no more. It is quite evident that Rule 17-A has been deleted with a view that unnecessarily applications are not filed primarily with a view to prolong the trial."

16. In ***Bagai Construction through its proprietor Lalit Bagai v. Gupta Building Material Store*** (supra) the Supreme Court has held that when sufficient opportunity was available to the parties to place materials before the Court and to lead evidence during the entire trial and despite which, the opportunity was not availed, in such a situation powers of Court under section 151 of the Civil Procedure Code cannot be invoked. In the said case

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> the final arguments were heard and the matter was posted for judgment and thereafter to improve the case, the plaintiff therein had come forward with an application to avoid final judgment against it, such course was not permissible even with the aid of Section 151 of the Code. It was observed that the Supreme Court had repeatedly held that courts should constantly endeavour to follow such a time schedule and if the same is not followed, the purpose of amending several provisions of the Code would get defeated. It was held that the applications for adjournments, reopening and recalling witnesses are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. The decision of the Supreme Court surely applies to the facts in hand where defendant No. 3 never came before the Court by moving an application to reopen the evidence.

25) Again, the judgment in ***Ashok Lalta Pandey*** is sought to be distinguished on the ground that the arguments therein were concluded. However, the said judgment is an authority on the proposition that recall of witness cannot be sought to fill the lacunae in the evidence and when the attempt is not bonafide. The judgment also distinguishes and explains the ratio of the judgment in ***K. K. Velusamy***.

26) Mr. Joshi has relied upon judgment of this Court in ***Prabhakar Yeshwant Ranade*** (supra) in which witness was sought to be recalled under the now deleted provision of Order 18 Rule 17A of the Code on the ground that no prejudice would be caused to the Defendant if Plaintiff was permitted to produce documents in question as Defendant can always cross examine the Plaintiff thereafter. This Court held that mere non-cause of prejudice to the Defendant, which is a subject matter of speculation, cannot be a ground for allowing the application for production of additional evidence. This Court relied on judgment of the Apex Court in ***Union of India versus. N.K.C. Kutty***[6] in which it has held that the question of prejudice being caused to a party is a secondary issue and the paramount issue is whether the course of

6 1976 B.L.R. 332

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action is sanctioned by the law or not. In the present case, mere non cause of prejudice to the Plaintiff is not a ground on which Defendant can be permitted to recall the D.W.1. In the present case also, 'no prejudice' theory cannot be applied when the Defendant has failed to make out foundational ground for permitting recall of the witness for production of additional evidence.

27) Mr. Joshi has relied upon judgment of this Court in ***Mr. Pralhad Chavatrao Lawand*** (supra) in which order rejecting the application for leading further evidence was under challenge. This Court referred to the judgment of the Apex Court in ***K.K. Velusamy***. The Court held that there was no pleading in the application about exercise of due diligence and accordingly upheld the order of the Trial Court. The ratio of judgment applies in the present case as there is complete absence of pleading of due diligence. On the contrary, there is implicit admission of availability and access to evidence (bills) in the pretext of inadvertence set up by the Petitioner/Defendant.

28) The Order of the Appellate Court is sought to be criticized citing the findings in Para 21 of the judgment contending that the merits of the defence raised by the Defendant about irrevocable license is determined while deciding applications for recall of witness for leading additional evidence. In my view, even if any observation is made about the merits of the defence, the same are to be ignored. Those observations cannot be a reason for letting Defendant to lead additional evidence by recall of DW-1, when it has failed to make out case for such recall.

29) Again, findings in para-17 of the judgment of the Appellate Court about absence of pleadings about the bills, cannot be a reason for allowing the present Petition. In Para 17 of the judgment, the Appellate Court has observed that "*It is notable here that in the entire written statement, defendant has not stated that as per alleged bills of Mr. Babubhai V Rathod, who is contractor it had made payments to him in the year 2008, the payments thereof are already reflected in ledger books of account (Exh.79), it has made payment as per the said bills after tax deducted at source therefrom. Hence, this much averments made in the said application are beyond pleadings. As per the settled principles of law, the evidence beyond pleadings needs no consideration."* This is just an additional reason recorded by the Appellate Court, the main reason being absence of due diligence, availability of evidence and absence of requisite pleadings.

30) Considering the overall conspectus of the case I am of the view that the Defendant is extremely negligent in not producing the bills despite possessing them and despite having ample opportunity for over 16 long years to produce the same. It is difficult to believe that what was consciously not produced in 16 years was suddenly searched in 20 days after filing of evidence closure purshis. Thus, the Defendant appears to have deliberately filed application for recall of D.W.1 with the objective of delaying decision of the suit. When the suit was supposed to be argued, the Defendant has successfully derailed the same by filing applications at Exhibits 89 and 93. Defendant has partially achieved its objective as the suit still remains at arguments stage though Defendant's evidence is closed in 8 April 2025. Filing of

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those applications and filing of the present Petition is thus gross abuse of process of law.

31) Defendant is enjoying possession of large commercial premises at a prominent location in Mumbai city by paying license fees of only Rs.96,800/- when the commercial rent in respect of the premises might be in the range of Rs.10 lakhs per month. Therefore, the objective in delaying decision of the suit is more than apparent. Defendant is a licensee who is holding on to possession of the licensed premises for the last 29 long years. There is no renewal of license after the year 2006. Therefore, Defendant's defence of having incurred expenditure in renovating the premises will have to be ultimately decided keeping in mind the fact that it is merely a licensee in the premises. The ledger entries are after execution of license and during and after the license period. Whether a licensee, who spends money in improving the premises, becomes entitled to remain in the possession forever is the issue that the Trial Court would consider and decide. As of now, it cannot be concluded that non-production of those Bills would make a world of difference while defending the suit. There are other defenses raised by the Defendant about purchase of premises in the name of entity formed only for the purpose of acquisition of assets by the Defendant. This is yet another factor to be borne in mind in addition to the fact that the Defendant had ample time to search and produce the bills of alleged expenditure. Defendant was aware of the fact that the issue has been framed at its instance about incurring of expenditure and that it is Defendant's burden to prove the same. However, it decided to discharge the burden by relying on only the ledger entries and was content with the same for 6 long years when its

witness was in the box. However, after realizing that the suit, which is dragged for 16 long years, was likely to be concluded, it came out with a novel idea of delaying the same and what was consciously withheld for 16 years, is suddenly sought to be produced after evidence closure.

32) In my view therefore, no interference is warranted in the decisions of the Trial and the Appellate Courts. Writ Petition are not only devoid of merits but are gross abuse of process of law. Petitions therefore deserve to be dismissed with costs.

33) Writ Petitions are accordingly dismissed with costs of Rs. 25,000/- in each of the Petitions to be paid to the Plaintiff. The Trial Court shall forthwith commence arguments in the suit and decide the suits in an expeditious manner.

[SANDEEP V. MARNE, J.]