

**HIGH COURT OF ANDHRA PRADESH**

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**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**&**

**THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

**C. R. P. Nos. 3774, 3778 and 3779 of 2025**

Between:

IDMC Limited, Rep.by its Managing Director,  
GIDC Estate, Vithal Udyog Nagar,  
Anand District, Gujrat State and 2 others

.....PETITIONERS  
(in all three CRPs)

AND

M/s. C-Star Engineers & Contractors (C-180)  
Rep.by its Proprietor Sri S.V.Shiva Kumar,  
Visakhapatnam

.....RESPONDENTS  
(in all three CRPs)

**DATE OF JUDGMENT RESERVED : 03.02.2026**

**DATE OF JUDGMENT PRONOUNCED: 22.04.2026**

**DATE OF JUDGMENT UPLOADED : 22.04.2026**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI  
&  
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair  
copy of the Judgment? Yes/No

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM, J**

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! Counsel for the Petitioners : Sri C. V. R. Rudra Prasad,  
Assisted by Sri Pavan Kumar M

Counsel for the Respondents : ---

< Gist :

> Head Note:

? Cases Referred:

1. (2013) 14 SCC 1

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**COMMON JUDGMENT:** (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri C. V. R. Rudra Prasad, assisted by Sri Pavan Kumar M, learned counsel for the petitioners in all three civil revision petitions.

2. The petitioners are the defendants and the respondent is the plaintiff in C.O.S.No.10 of 2022, pending in the Court of the Special Judge for Trial and Disposal of the Commercial Disputes, at Visakhapatnam (in short 'the Special Judge').

3. The plaintiff/respondent originally filed O.S.No.9 of 2017 on the file of the learned XIII Additional District Judge, Gajuwaka, Visakhapatnam, which was later on transferred to the Court of the Special Judge and re-numbered as COS.No.10 of 2022. The suit is for recovery of an amount with subsequent interest and costs. In the said suit, the defendants/petitioners filed I.A.No.268 of 2025 for the purpose of receiving document and cross examination of PW 1; I.A.No.269 of 2025 under Order XVIII Rule 17 of Code of Civil Procedure (in short 'CPC') to recall PW 1 for further cross examination, and I.A.No.270 of 2025 under Order XI Rule 1 (10) CPC, as applicable to the Commercial Courts, to receive the legal notice dated 29.06.2012 issued by the plaintiff under Section 138 of the Negotiable Instruments Act as documentary evidence. All the three aforesaid I.As have been dismissed with costs by the learned Special

Judge, vide Orders of the same date 14.11.2025, but passed separately on each application.

4. Challenging the said Orders dated 14.11.2025 in I.A.No.268 of 2025, CRP No.3779 of 2025; in I.A.No.269 of 2025, CRP No.3774 of 2025 and in I.A.No.270 of 2025, CRP No.3778 of 2025 have been filed under Article 227 of the Constitution of India.

5. As the issue involved is almost common, as the prayer made in all applications is related, we proceed to decide all the civil revision petitions by the common judgment.

6. In I.A.No.268 of 2025 the learned Special Judge framed the following points for consideration:

“(1) Whether the petitioners’ side evidence can be reopened for further cross examination of PW 1?

(2) To what relief?”

7. The learned Special Judge held that the suit stands posted for filing of written arguments and at that belated stage, the application could not be allowed when the document sought to be produced vide I.A.No.268 of 2025 was in possession of the petitioners all along.

8. In I.A.No.269 of 2025 the learned Special Judge framed the following points for determination:

“(1) Whether PW 1 can be recalled for further cross examination?

(2) To what relief?”

9. The learned Special Judge recorded the same reason that at the belated stage when the suit was posted for filing of written arguments and the said document was undisputedly in the possession of the petitioners all along, the suit could not be reopened to recall PW 1 for cross examination.

10. In I.A.No.270 of 2025 the learned Special Judge framed the following points for determination:

“(1) Whether the legal notice dated 29.06.2012 can be received as an evidence on behalf of petitioners/defendants?

(2) To what relief?”

11. The learned Special Judge held that the legal notice under Section 138 of the Negotiable Instruments Act dated 29.06.2012 was undisputedly in possession of the petitioners all along. The learned Special Judge did not accept the contention of the petitioners/defendants that the said document could be traced only recently and such reason assigned did not inspire confidence to the learned Special Judge. Observing that the object of the Commercial Courts Act 2015 is expeditious disposal of the commercial disputes and in view of the express bar in the Order 11 Rule 1 (10) CPC as amended in its application by the Commercial Courts Act, the defendants/petitioners could not be permitted to file a document at that stage which was all along in their power and possession.

12. Learned counsel for the petitioners submitted that the rejection of the petitioners' applications by the Orders impugned in the civil revision petitions cannot be sustained. He submitted that in the plaint filed by the

plaintiff/respondent there was specific mention of the legal notice dated 29.06.2012 issued by the plaintiff and though the plaintiff made an averment to that effect in the plaint, but had chosen not to file the said document in the list of documents along with plaint. Consequently, the application was filed by the defendants seeking leave of the Special Court of the Special Judge to file the said document as also to reopen for cross examination of PW 1 after receiving the document. He further submitted that the said fact of non-filing of the legal notice came to the knowledge of the petitioners only recently at the time of preparation of arguments. So, there was no negligence on their part in not filing the application previously, which was filed in a short span of closure of the evidence.

13. We have considered the aforesaid submissions and perused the material on record.

14. It has not been disputed that the document sought to be filed with the permission of the Court i.e., the legal notice issued by the plaintiff on 29.06.2012 was in power, possession and custody of the defendants/petitioners. They have chosen not to file it along with their written statement, which was filed on 19.02.2016 itself. With respect to the plaintiff's averment in the plaint about that legal notice dated 29.06.2012 vide para-III (f) the defendants/petitioners in their written statement, in para-8 of the written statement though generally denied the contents of para-III (f) of the plaint and disputed their liability under the terms and conditions of the purchaser order etc., but no specific dispute was raised with respect to the legal notice dated

29.06.2012. The list of documents along with the plaint clearly revealed as to what documents were filed by the plaintiff along with the plaint which did not contain the legal notice dated 29.06.2012. The defendants had the knowledge that the document legal notice dated 29.06.2012 issued by the plaintiff to the defendants was not filed by the plaintiff. The said document was in possession of the defendants as that notice was sent to the defendants and there was no denial of its receipt in the written statement. Even in the application, there is no such averment.

15. Order XI Rule 1 (10) CPC specially provides that save and except for sub-rule 7 (c) (iii), defendants shall not be allowed to rely on documents, which were in the defendants power, possession, control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim. Sub-rule (7) (c) (iii) of Order XI Rule 1 CPC is not attracted. It is also not the petitioners' case that such clause is attracted. Consequently, in view of the mandate of law, the petitioners/defendants could not be allowed to rely on the document i.e., the legal notice dated 29.06.2012, which was not filed along with the written statement, which should have been filed by the defendants, as the same was not filed by the plaintiff with the plaint which could also not be filed by the plaintiff as it was in possession, power and control of the defendants, along with their written statement filed way back in 2016. Though a document can be filed afterwards also, but with the leave of the

Court. The mandate of law is that such leave shall be granted by the Court only upon defendants establishing the reasonable cause for non-disclosure/non-filing along with the written statement. So, in the absence of any reasonable cause forthcoming, the Court shall not grant the leave. The cause stated by the defendants in the application has not been established to be a reasonable cause to the satisfaction of the learned Special Judge.

16. We are of the view that under the circumstances, the cause stated has rightly not been believed by the learned Special Judge.

17. It is settled position in law that at a belated stage, an application to recall a witness cannot ordinarily be allowed. In the present case, the application to recall the witness was with respect to the document i.e., the legal notice sought to be filed and once that was not permitted, leave was not granted by the Special Judge for the reasons recorded which are reasonable and justifiable, the question of recalling the witness does not arise.

18. ***Bagai Construction v. Gupta Building Material Store***<sup>1</sup>, on which the learned Special Judge placed reliance, learned counsel for the petitioners submitted that the said judgment is not applicable. But we find that the submission is not correct.

19. In ***Bagai Construction*** (supra) the Hon'ble Apex Court has held that the power under Order 18 Rule 17 CPC is to be sparingly exercised and not as a general rule in a routine way merely for the asking otherwise it will defeat

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<sup>1</sup> (2013) 14 SCC 1

the very purpose of expeditious trial. Paragraphs 9 to 12 of ***Bagal Construction*** (supra) read as under:

“9. In *Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate* [*Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*, (2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198] this Court had an occasion to consider similar claim, particularly, application filed under Order 18 Rule 17 and held as under: (SCC pp. 414-15, paras 25, 28-29 & 31)

“25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

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28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

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31. Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

10. If we apply the principles enunciated in the above case and the limitation as explained with regard to the application under Order 18 Rule 17,

the applications filed by the plaintiff have to be rejected. However, the learned counsel for the respondent by placing heavy reliance on a subsequent decision, namely, *K.K. Velusamy v. N. Palanisamy* [*K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275 : (2011) 3 SCC (Civ) 665] , submitted that with the aid of Section 151 CPC, the plaintiff may be given an opportunity to put additional evidence and to recall PW 1 to prove those documents and if need arises other side may be compensated. According to him, since the High Court has adopted the said course, there is no need to interfere with the same.

**11.** In *Velusamy* [*K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275 : (2011) 3 SCC (Civ) 665] even after considering the principles laid down in *Vadiraj Naggappa Vernekar* [*Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*, (2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198] and taking note of Section 151 CPC, this Court concluded that: (*K.K. Velusamy case* [*K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275 : (2011) 3 SCC (Civ) 665] , SCC p. 286, para 22)

“22. ... in the interests of justice and to prevent abuse of the process of the court, the trial court [is free to consider] whether it was necessary to reopen the evidence and if so, in what manner and to what extent....”

**12.** Further, it observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant: (*K.K. Velusamy case* [*K.K. Velusamy v. N. Palanisamy*, (2011) 11 SCC 275 : (2011) 3 SCC (Civ) 665] , SCC p. 285, para 19)

“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.”

20. Consequently, we are of the view that the applications could not be allowed and have rightly been disallowed at the belated stage of filing of the written arguments, considering the object of Commercial Courts Act which is for expeditious disposal of the disputes of commercial nature.

21. No case for interference is made out with the Orders impugned as we do not find any such ground for interference under Article 227 of the Constitution of India in the exercise of supervisory jurisdiction which is not to be so invoked in a routine way.

22. All the aforesaid Civil Revision Petitions are dismissed.

23. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

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**RAVI NATH TILHARI, J**

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**MAHESWARA RAO KUNCHEAM, J**

Date: 22.04.2026  
Dsr

Note:

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