

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13394 of 2025
IN
WRIT PETITION NO. 4611 OF 1995

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Kirit Enterprises Refrigeration Pvt. Ltd. ...Applicant/Petitioner
Versus
The Union of India and Others ...Respondents

Mr. Aseem Naphade a/w. Aneish Jadhav, Sanjeel Kadam, Netra Jagtap, Smiti Sathe i/b. Kadam and Co. for Applicant/Petitioner.
Mr. R. V. Govilkar, Senior Advocate a/w Mr. R. P. Ojha for Respondent Nos. 1 & 2.

CORAM : M.M. SATHAYE, J.

DATE : 8th SEPTEMBER, 2026

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Writ Petitioner is seeking to recall the order dated 08.10.2025 passed by this Court (Coram : Shri. Rajesh S. Patil, J.) by which various civil applications, especially CA/2777/2004 was disposed of as not surviving.
3. Learned counsel for the Applicant pointed out that CA/2777/2004 was filed by the Petitioner to amend and add exhibits and pleadings to the petition. He submitted that those prayers do not seem to have been considered in order dated 08.10.2025 and therefore, the order disposing of CA/2777/2004 needs to be recalled and the application needs to be heard on its own merits. It is further

submitted that when CA/2777/2004 was pending, it was already directed that it will be heard along with writ petition. He states on instructions that he is restricting the prayer in this application only for CA/2777/2004.

4. Learned counsel for the Petitioner also submitted that the prayer of recall of the order is akin to seeking review/modification of the order dated 08.10.2025 and therefore it would lie before same learned Single Judge, under an administrative order. He relied on Chapter 13, Rule 3 of the Bombay High Court Appellate Side Rules, 1960 for said submission.

5. On the other hand, learned Senior Advocate appearing for Respondent Nos.1 & 2 opposed the contention that this application must be heard by the same Judge. Contending that this application cannot be treated as for review or modification, it is urged that what is ultimately prayed is recall of the earlier order by which many civil applications were disposed of without considering CA/2777/2004. On instructions, learned Senior Advocate for the Respondents, has conceded and submitted that CA/2777/2004 can be heard on its own merits along with the writ petition because indeed it was not considered while passing order dated 08.10.2025. He submitted that the writ petition itself is pending from 1995 and needs to be taken up immediately. He submitted that under concurrent findings, the Petitioner's eviction under the Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 is the issue involved.

6. I have considered the rival submissions and perused the record.

7. On bare perusal, it is clear that order dated 08.10.2025 was passed while considering an interim application for fixing early date of hearing. The order does not even remotely indicate or make a reference to any prayer of amendment (as made in CA/2777/2004) being considered. Respondents have also conceded to this position and has fairly taken stand that CA/2777/2004 can be heard alongwith writ petition.

8. Perusal of the present application indicates that the main prayer in the application is only for recall of order dated 08.10.2025. On reading present application as whole, I do not find that the prayer includes any prayer of review or modification.

9. The Court is informed that after filing present application, the Writ Petitioner has also filed in August 2026, an appeal in the Hon'ble Supreme Court challenging the same Order dated 08.10.2025. It is also informed that the Hon'ble Supreme Court has not been moved and no order has been passed.

10. Firstly, there is apparently no explanation why and how the Petitioner/Applicant during pendency of this application for recall, has filed appeal before the Hon'ble Supreme Court challenging the same order. Since this application is filed prior in point of time and since nothing is brought to the notice of the Court that Hon'ble Supreme Court has in any way barred this Court from considering the present application, this application is taken up for disposal of merits.

11. As is already clarified above, the main prayer in the application is only for recall of order dated 08.10.2025 and there is no element

of review/modification involved. In that view of the matter, the concerned Rule from the Appellate Side Rules, relied upon by the Applicant, will not help the Applicant.

12. In the aforesaid facts and circumstances, this application is allowed. The order dated 08.10.2025 passed in CA/2777/2004 is recalled. It is directed the CA/2777/2004 shall be heard along with petition.

13. Place WP/4611/1995 along with pending civil/interim applications, including CA/2777/2004, on 30.09.2026 at 3.00 p.m. for hearing.

(M.M. SATHAYE, J.)