

MHKO070004892017	<u>R.C.S.No.77/2017</u>
	Mohsin Ismail Modi through Power of Attorney Ismail Rahim Modi Vs. Manohar Gurupad Hadpad

ORDER BELOW EXH.43

This application is filed by the plaintiff and prayed for setting aside the order dated 08/10/2025. Whereby the affidavit of examination-in-chief filed by the plaintiff was discarded and the plaintiffs evidence was closed.

02. The plaintiff has submitted that, he has instituted the present suit for recovery of money against the defendant The plaintiff had filed his affidavit of examination-in-chief. However, since the plaintiff is residing at Satara, he was suffering from illness and also met with an accident, he could not remain present before the court for his cross-examination. Consequently, this court discarded his affidavit of evidence and closed his evidence. It is further submitted that, the absence of the plaintiff was neither intentional nor deliberate. In order to decide the suit on merit the plaintiff should be afforded one more opportunity and the order of discarding of his evidence deserves to be set aside.

03. The defendant has filed his say and resisted the present application and denied the alleged illness and accident of the plaintiff and has also submitted that, no medical certificate and documentary evidence has been produced in support of his

contention. It is further submitted that, an earlier 'No evidence' order dated 21/10/2023 has already been set aside and thereafter sufficient and repeated opportunity were granted to plaintiff. Despite such indulgence, the plaintiff again failed to remain present for cross-examination. Therefore, by order dated 08/10/2025 below Exh.1 the affidavit of evidence was discarded and plaintiffs evidence was closed. Hence according to defendant, no further opportunity deserves to be granted. Hence prayed for rejection of the application .

04. Heard Ld.Adv. for both sides. Perused the application, reply and entire record.

05. It is an admitted position that, the plaintiff has instituted the present suit for recovery of money. The plaintiff has already filed his affidavit of examination-in-chief. It is also not in dispute that on account of plaintiff repeated absence for the cross-examination. This court discarded the affidavit of evidence and closed the plaintiff evidence. It is true that, the record reflects that several opportunities has been granted to the plaintiff for cross-examination. It is also equally true that, plaintiff has not produce any material in support of the plea of illness and accident.

06. The dispute between the parties relates to recovery of money and the rights of the parties can be effectively adjudicated only after recording evidence of both parties. Plaintiff negligence can adequately be compensated by imposing appropriate costs and by granting last opportunity subject to conditions. Therefore,

considering the nature of dispute, the stage of proceedings the order dated 08/10/2025 discarding of plaintiffs affidavit of examination-in-chief and closing the plaintiff evidence deserves to be set aside. Hence, I proceed to pass the following order -

ORDER

1. The application is allowed.
2. The order dated 08/10/2025, whereby affidavit of examination in chief of the plaintiff was discarded and the plaintiffs evidence was closed is hereby set aside.
3. The affidavit of examination in chief filed by the plaintiff is restored on the record.
4. Plaintiff shall remain present for cross-examination on the date fixed by the court.
5. Plaintiff shall pay the cost of Rs.700/- to the defendant on or before next date of hearing. In default of payment of costs, the benefit of this order shall stand vacated automatically.

(Smt. P. S. Bhosale)

Place : Jaysingpur
Date : 04/07/2026

Jt. Civil Judge Junior Division,
Jaysingpur, Tal.Shirol, Dist.Kolhapur