

MHKO070016122024 	<u>Civil M. A. No.40/2024</u> Mohsin Ismail Modi through Power of Attorney Ismail Rahim Modi Vs. Sidram Virupaksha Hadpad
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ORDER BELOW EXH.23

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

02. Applicant has submitted that, he had instituted the R.C.S.No.78/2017 for recovery of money. During the pendency of the suit, there was a delay on the part of plaintiff in filling the affidavit of examination-in-chief. Consequently, the suit came to be dismissed in default. Thereafter, the plaintiff filed the present Civil Application seeking restoration of the suit. In the said application the applicant has filed his affidavit of examination-in-chief. However, since the applicant 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 applicant was neither intentional nor deliberate. In order to decide the application on merit the applicant should be afforded one more opportunity and the order of discarding of his evidence deserves to be set aside.

03. The Non-applicant has filed his say and resisted the present application and denied the alleged illness and accident of the applicant and has also submitted that, no medical certificate and documentary evidence has been produced in support of his contention. The applicant failed to remain present for cross-examination therefore by order dated 08/10/2025 below Exh.1 the affidavit of evidence was discarded and applicants evidence was closed. Hence according to Non applicant, no further opportunity deserves to be granted. Hence prayed for rejection of application .

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

05. It is an admitted position that, the applicant has instituted the present application for restoration of R.C.S.No.78/2017. The applicant has already filed his affidavit of examination-in-chief. It is also not in dispute that on account of applicant repeated absence for the cross-examination. This court discarded the affidavit of evidence and closed the applicant evidence. It is true that, the record reflects that several opportunities has been granted to the applicant for cross-examination. It is also equally true that, applicant 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. Applicant 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 proceeding, the order dated 08/10/2025 discarding of applicants affidavit of examination-in-chief and closing the applicant 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 applicant was discarded and the applicants evidence was closed is hereby set aside.
3. The affidavit of examination-in-chief filed by the applicant is restored on the record.
4. Applicant shall remain present for cross-examination on the date fixed by the court.
5. Applicant shall pay the cost of Rs.700/- to the Non applicant on or before next date of hearing. In default of payment of costs, the benefit of this order shall stands vacated automatically.

(Smt. P. S. Bhosale)

Place : Jaysingpur
Date : 04/07/2026

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