

MHLA160000042003 	<u>Reg. Civil Suit No.106/2008</u> <u>Ramrao & Ors. Vs. Pandharinath & Ors.</u>
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ORDER BELOW EXH.124

This is application to set aside order of discard evidence of PW-1 below Exh.117.

2. Heard both sides at length. I have carefully gone through the record. This is suit for partition and possession. The plaintiff filed affidavit in lieu of examination-in-chief (Exh.117) on 02/03/2026. But the defendants were absent. Therefore, no cross order was passed. Thereafter, the defendant No.2 and 3 got permission to cross examine witness vide order below Exh.119 dated 12/03/2026. Thereafter, the witness was absent on 17/03/2026 and 23/03/2026. Therefore, I have discarded his evidence vide order dated 23/03/2026. The application disclosed general reason, which was well within control of the plaintiff and the witness. There is no document in support of the reason. Thus, the plaintiff himself trying to prolong the matter, which is 20 years old. This is good ground to impose heavy costs, if allowed the application.

3. Now the plaintiff wants to complete evidence of PW-1. Considering nature of suit, its subject i.e. landed property and to decide the right and liabilities, the plaintiff has to grant an opportunity to complete evidence of PW-1. This is fact finding Court and bound to find the truth. For that purpose, let's to go through the

settled principle of law. An opportunity is the back bone of justice and if it is refused, there is every possibility of miscarriage of justice. It is an important to mention here that, the law and rules of procedure are always handmaiden of justice and not suppose to defeat ends of justice. So, imposing costs will meet the ends of justice. Therefore, I reached to the conclusion that, plaintiff has to grant an opportunity for completing the evidence of PW-1, subject to costs. This application is deserved to be allowed. Hence, I pass the following order.

-:: ORDER ::-

1. The application is allowed and set aside order of discard evidence dated 23/03/2026 and plaintiff is permitted to complete evidence of PW-1 subject to costs Rs.1000/- and following conditions.
2. The plaintiff shall pay costs to the defendants or deposit in the Court and complete evidence of PW-1, failing which, order will be automatically cancelled.
3. Both parties shall expedite the suit and should not claim undue adjournment.
4. Order dictated on computer and pronounced in open court.

Date- 25/03/2026
Deoni.

(S.A. Surjuse)
Civil Judge Junior Division,
Deoni.