

ORDER BELOW APPLICATION FILED AT EXH.67

This application has been filed to set aside the previous order closing the Plaintiffs' evidence and to grant a further opportunity to lead evidence.

2. The Plaintiffs' advocate submitted that the current date was fixed for the Defendants to file their reply. However, on the previous date, the Court had closed and discarded the Plaintiff's evidence due to the non-appearance of the Plaintiffs and their counsel. The Plaintiffs sought to reopen the evidence, submitting that the Plaintiffs were elderly and could not appear in court. Furthermore, the Plaintiff's counsel was sick and therefore could not attend the court on the scheduled dates. The Plaintiff contended that if they were not given a chance to lead evidence, they would suffer immense prejudice and loss. The Plaintiff, therefore, prayed that the previous order be set aside and that they be allowed an opportunity to lead their evidence.

3. The advocate for Defendant No. 1 filed a reply opposing the application. The Defendant submitted that the Plaintiff had already filed the Affidavit of Examination-in-Chief (Exh. 69) on November 8, 2024. The Defendant pointed out that despite this, the Plaintiff and their counsel remained absent on numerous dates between November 8, 2024, and March 11, 2025. The Defendant emphasised that the Plaintiffs and their advocate presented no explanation for this non-appearance during those four months, nor did they file any application explaining their absence. The Defendant contended that the Plaintiffs were attempting to harass the Defendants mentally and lacked seriousness in pursuing the suit. The suit was, in the Defendant's view, filed only to compel the

Defendants to make repeated visits to the Court. The Defendant prayed that the Plaintiffs' application be dismissed with costs of Rs. 5,000/-.

4. The Court considered the submissions of both advocates and reviewed the record.

5. The Court noted that the Plaintiffs sought to set aside the order closing evidence, which effectively necessitated invoking the Court's inherent power or the provisions concerning restoration or review. Specifically, the Court had to consider the Plaintiffs' compliance with the provisions of the Code of Civil Procedure, 1908 (CPC), regarding due diligence.

6. The record confirmed that the Plaintiffs had filed their evidence by affidavit on November 8, 2024. The subsequent Court orders clearly indicated that the Plaintiffs failed to present themselves or their counsel for the cross-examination on multiple dates thereafter. The reasons now cited by the Plaintiffs, the Plaintiff's old age and the counsel's sickness, were not substantiated by any medical certificate or contemporaneous application filed during the four-month period of repeated non-appearance (November 2024 to March 2025).

7. I have found that the Plaintiffs, despite having filed their Examination-in-Chief, displayed a clear lack of diligence and earnestness in prosecuting the suit by failing to appear for cross-examination over a prolonged period. While the Court generally aims to provide parties with an opportunity to lead evidence as per the principles underlying Order XVIII of the CPC, this right is not absolute and is subject to the timely and

serious conduct of the litigant. The Court found the reasons for setting aside the previous order to be belated and unconvincing. Allowing the application would amount to undue indulgence and would further prejudice the Defendant by delaying the matter, as alleged by the Defendant.

8. However, in the interest of justice and to ensure that the suit was decided on its merits, the Court decided to grant one final opportunity to the Plaintiffs, subject to payment of heavy costs to compensate the Defendant for the mental and financial burden caused by the delay and repeated unnecessary court attendances. This decision was guided by the principle that procedural non-compliance, while serious, should not invariably lead to the rejection of a just claim if it can be remedied with costs. Hence, I pass the following order.

ORDER

1. The Court, therefore, allowed the Plaintiffs' application, subject to the condition that the Plaintiffs paid costs of Rs. 1,000/- to Defendant No. 1. The previous order closing the Plaintiffs' evidence was set aside.
2. The Plaintiffs were directed to present their witnesses for cross-examination on the next date of hearing without fail.
3. It further directed that no further adjournment would be granted for leading the Plaintiffs' evidence.
4. The Rs. 3,000/- costs were to be paid to the Defendant's advocate before the commencement of cross-examination on the next date, and failure to pay the costs would automatically revive and confirm the previous order closing the evidence.

Date:- 06/10/2025
Division, Patan.

(Rajesh M. Lolge)
Civil Judge Jr.