

**R.C.S. No. 110/2009**  
**(CNR No. MHST13-000822-2009)**

**Order Below Exh. 85**

01. This is an application moved by the defendant No. 3 for setting aside evidence closed order.

02. It is contended by defendant No. 3 that, due to her illness she failed to present before the Court and also failed to face cross examination due to which the evidence closed order has been passed against defendant No. 3 on 13.08.2018. If said evidence closed order is not set aside then she would lose her valuable right to defend the suit. On the contrary, if she is to be permitted to adduce evidence, it would assist the Court in delivery of justice and no prejudice would be caused to the plaintiff. On all these grounds the defendant No. 3 prayed for allowing this application.

03. The application has been resisted by the plaintiff by filing say on the leaf of the application. The plaintiff has denied the reason for delay as not true and satisfactory. Therefore, the application be rejected or else if it is to be allowed it may be allowed with heavy costs of Rs.5,000/-.

04. Heard both learned advocates and gone through the record of proceeding. The application under consideration is supported by an affidavit. It is basic principle of law that, no one should be condemned unheard. So it will be proper to decide it on merit after giving opportunity of hearing to both sides. It will also help the Court to avoid multiplicity of litigation. The defendant No. 3 claims that, due to her illness she failed to present before the Court and also failed to face cross examination. The medical certificate of her sickness is not on record however this is no ground to disbelieve her version. To permit defendant No. 3 to adduce evidence on her behalf would assist this Court to come to right conclusion.

05. In view of natural justice and to decide the matter on merit, defendant No. 3 is required to be given an opportunity to examine herself and face cross examination. The procedural bottlenecks should not be allowed to come in the way of substantial justice. The plaintiff can be compensated by imposing cost on the defendant No. 3. Hence, in the result I pass following order:-

**ORDER**

'Evidence closed' order passed against defendant No.3 is hereby set aside subject to costs of Rs.500/-.

Date : 27.11.2018.

(P.S.Patil)  
Jt. Civil Judge, J.D.,  
Patan