

Order No. 41 Date:- 17.08.19

Parties file hazira. Defendant No. 1 files a petition stating that the DW-1 was cross-examined by the Plaintiff and the record was fixed for cross examination by the Defendant No. 12, 13 to 15. The DW-1 was present but was temporarily absent from Court when the matter was called. As he was not found on call, the cross examination of DW-1 was closed. There was no willful negligence or laches on part of the DW-1 and it is prayed that the DW-1 be allowed to be cross-examined by Defendant No. 12, 13 to 15. Copy served.

Defendant No. 1 moves the petition. Heard all the Ld. Advocates. Objection is raised verbally. I have gone through the previous order from which it is found that the witness was found to be absent till 12 noon and as none moved the DW-1 was closed. From the record it also appears that subsequently at 12.30 PM a witness hazira was filed. Previously, the Defendant No. 1 to 8 was absent without any step and the evidence was closed on that account. Considering the fact that the dispute should be adjudicated upon fully and finally and the parties should be given opportunities, I am inclined to allow the petition. However, it is also clear that the parties must also be diligent in conducting the case. Hence it is,

ORDERED

that the petition filed by the Defendant No. 1 today for allowing the D.W-1 to fresh cross examination by Defendant No. 12, 13 to 15 is hereby allowed on contest.

The Defendant is directed to present the DW-1 before the Court on the date fixed.

The Defendant Nos. 12, 13 to 15 files a petition on affidavit praying for allowing them to adduce evidence on their behalf on the ground that vide order dtd. 16.07.2019 the entire DW-s were closed on account of absence of the witness i.e. DW-1 for the Defendant No. 1 to 8 and accordingly they were deprived of adducing evidence. Copy served.

The Defendant Nos. 12, 13 to 15 moves the petition. Heard all the Ld. Advocates.

Having gone through the record and it appears that the evidence of the Defendant Nos. 12, 13 to 15 were closed on 16.07.2019 without any fault on their part. In reality vide the aforesaid order the DW-1 was closed and argument was fixed instead of the evidence of Defendant Nos. 12, 13 to 15. Accordingly, the instant petition is liable to be allowed.

Hence, it is

ORDERED

that the petition filed by the Defendant Nos. 12, 13 to 15 today for leave to adduce evidence / DW-s is hereby allowed on contest.

Fix 20.11.19 for cross-examination of the DW-1 by the Defendant No. 12, 13 to 15. The DW-1 is directed to remain present to face cross-examination. Dictated & Corrected by me.

C.J (Sr. Divn.) Lalbagh, Msd.

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