

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 21006/2025

1. Khushkumar Soni S/o Murlidhar Soni, Aged About 44 Years, Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan
2. Gaurav Soni S/o Murlidhar Soni, Aged About 38 Years, Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan
3. Lrs Of Bhanwarlal Soni, S/o Narayanlal, Through-
 - 3/1. Jitendra Kumar S/o Late Bhanwarlal, Aged About 46 Years, Village Aauwa, At Present- Purusharthi Nagar, 1St Floor City Height Complex, Pali, District Pali Rajasthan.
 - 3/2. Smt. Saroj D/o Late Bhanwarlal, W/o Prakash Soni, Aged About 54 Years, R/o Village Aauwa, At Present- 438 Bhopal Chauk, Camp Pune Maharashtra.
 - 3/3. Smt. Meena D/o Late Bhanwarlal, W/o Mahesh, Aged About 52 Years, R/o Village Aauwa, At Present- Hariniwas Building, Gwalior Tank, Mumbai Maharashtra.
 - 3/4. Smt. Indubala D/o Late Bhanwarlal, W/o Pawan Kumar, Aged About 50 Years, Shanti Devi Market, Meena Marg, Merta City, Nagaur Rajasthan.
 - 3/5. Gaytri Devi D/o Late Bhanwarlal, W/o Devraj Soni, Aged About 48 Years, R/o M/s Variety Jewellers, Pipri Nilakh, Pune Maharashtra.
 - 3/6. Smt. Pushpa Devi D/o Late Bhanwarlal, Aged About 70 Years, R/o Village Aauwa, At Present- Purusharthi Nagar, 1St Floor City Height Complex, Pali, District Pali Rajasthan.

-----Petitioners

Versus

1. Kapoorchand Soni S/o Mishrilal Soni, Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
2. Smt. Laxmi Devi Soni W/o Mishrilal Soni, Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
3. Lalit Kumar S/o Kapoorchand Soni, Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
4. Hemant Kumar S/o Kapoorchand Soni, Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.

-----Respondents

For Petitioner(s)	:	Mr. Narendra Singh A. Rajpurohit
For Respondent(s)	:	Mr. J.K. Bhaiya

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT**25/03/2026**

1. The present writ petition under Article 227 of the Constitution of India has been filed by the petitioners-plaintiffs, aggrieved by the order dated 25.08.2025 (Annx.5) passed by the Civil Judge, Marwar Junction, District Pali, whereby the affidavits of plaintiffs' witnesses, namely, Madan Lal and Kanwar Lal, were declined to be taken on record and were directed to be placed in the 'D' part.
2. Heard learned counsel for the parties.
3. Learned counsel for the petitioners submits that the petitioners are co-owners of an ancestral residential house situated at Village Auwa, Tehsil Marwar Junction, District Pali, constructed about 61 years ago. The house has three ventilators at the rear, through which the petitioners have been enjoying uninterrupted air and light, thereby acquiring an easementary right. It is submitted that the respondents, while raising adjoining construction, have interfered with this right and partially damaged the ventilator, causing prejudice to the petitioners.
4. It is further submitted that the petitioners instituted a suit for permanent and mandatory injunction on 16.05.2016, which is pending adjudication. The respondents filed their written statement and issues were framed on 24.05.2018. During the stage of plaintiffs' evidence, affidavits of witnesses Madan Lal and Kanwar Lal were filed by way of examination-in-chief; however, the trial court declined to take the same on record and placed them in 'D' part.
5. Learned counsel contends that the trial court ought to have adopted a liberal approach in permitting such evidence, as it is

essential for proper adjudication and does not cause prejudice to the respondents. It is submitted that due diligence was exercised and sufficient cause existed for filing the affidavits.

6. It is further contended that the impugned order reflects an unduly technical approach, contrary to the settled principle that procedural law is intended to advance justice, thereby denying the petitioners a fair opportunity to present their case.

7. Per contra, learned counsel for the respondents supports the impugned order and submits that adequate opportunities had already been granted, and the affidavits were filed belatedly without justification; thus, allowing them would delay the proceedings and prejudice the respondents.

8. I have considered the submissions advanced by learned counsel for the parties and perused the material available on record.

9. The issue involved in the present petition is limited to the validity of the order dated 25.08.2025, whereby the affidavits filed by the petitioners by way of examination-in-chief have been declined to be taken on record on the ground of delay.

10. It is not in dispute that the suit is pending and that the affidavits were filed during the stage of plaintiffs' evidence.

11. The trial court rejected the affidavits primarily on the ground of delay and prior directions to file evidence at one instance.

12. In the considered opinion of this Court, the approach of the trial court is overly technical and does not advance the cause of justice. It is well settled that procedural rules are handmaidens of justice.

13. The affidavits in question relate to examination-in-chief of witnesses and are relevant for adjudication of the dispute. Mere delay, in the absence of demonstrated prejudice, is not sufficient to reject such evidence.

14. The trial court has failed to examine whether the evidence was necessary for a just decision and has rejected it solely on technical grounds.

15. Further, any inconvenience or prejudice that may be caused to the respondents can be adequately compensated by granting them an opportunity to cross-examine the said witnesses.

16. In view of the above discussion, this Court finds that the impugned order dated 25.08.2025 passed by the trial court cannot be sustained in the eyes of law and deserves to be set aside.

17. Accordingly, the present writ petition is allowed.

18. The order dated 25.08.2025 passed by the trial court is hereby quashed and set aside.

19. The trial court is directed to take on record the affidavits of witnesses Madan Lal and Kanwar Lal filed by the petitioners and proceed with the matter in accordance with law.

20. It is further directed that the respondents shall be afforded full opportunity to cross-examine the said witnesses.

21. The Trial Court shall make an endeavour to expedite the disposal of the suit.

22. Stay petition as well as all pending application(s), if any, shall also stand disposed of.

(MUKESH RAJPUROHIT),J