

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2 OF 2019
IN
SUIT NO. 743 OF 2002**

Mrs. Prabhadevi Sharma & ors. ...Applicants

In the matter between

Serum Institute of India Ltd. ...Plaintiffs

Versus

Mrs. Prabhadevi Sharma & ors. ...Defendants

Mr. Shyam Dewani, a/w Chirag Chanani, i/b Dewani & Asso.,
for the Plaintiffs.

Mr. Mahendra Ghelani, i/b Law Charter, for the Defendants/
Applicants.

CORAM: N. J. JAMADAR, J.

DATED : 6th JANUARY, 2020

PC:-

1. Heard the learned Counsel for the parties.
2. The defendant has preferred this application to recall the orders dated 8th April, 2019 and 11th November, 2019, the cumulative effect of which is that the defendants' evidence is closed, for default in filing the affidavit of evidence in conformity with the order dated 8th April, 2019.
3. Certain reasons are sought to be assigned for non-compliance of the order dated 8th April, 2019. It is submitted on behalf of the defendants that the affidavit of evidence of the

defendants' first witness is ready and it would be filed during the course of the day.

4. Mr. Dewani, the learned Counsel for the plaintiff submitted that the reasons sought to be assigned by the defendants are not justifiable and despite ample opportunities the defendants have failed to lead evidence and, thus, the application deserves to be rejected.

5. It is evident that a self-operative order was passed by this Court on 8th April, 2019. Indisputably, sufficient time has elapsed from the date of passing of the said order. The reasons assigned by the defendants may not account for the entire period for which the defendants were in default. However, to advance the cause of justice and provide an effective opportunity of hearing and promote adjudication on merits, the application deserves to be allowed.

6. In the aforesaid circumstances, the application stands allowed.

7. The orders dated 8th April, 2019 and 11th November, 2019 to the extent those orders debar the defendant nos.1 to 6 from leading evidence stand set aside.

8. Defendant nos.1 to 6 are permitted to lead evidence subject to payment of costs of Rs.10,000/- to the plaintiff, within a week from today.

9. Defendant nos.1 to 6 shall tender the affidavit in lieu of examination-in-chief of its first witness during the course of the day and furnish its copy to the plaintiff.

10. Defendant nos.1 to 6 shall keep its first witness present for recording further evidence before the Court on 20th January, 2020.

[N. J. JAMADAR, J.]