



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.2537 OF 2024
IN
TESTAMENTARY SUIT NO.18 OF 2016
IN
PETITION NO.1275 OF 2014**

Shraddha Sumeet Nabar	...	Applicant
and		
Prakash Narsojirao Tandale	...	Plaintiff
versus		
Mandakini Ashok Tandale and Anr.	...	Defendants

Mr. Sayed Zahir for Plaintiff in TS No.18 of 2016.
Mr. Surya S. Das, for Defendants/Applicant in IA 2537 of 2024.

CORAM: N.J.JAMADAR, J.

DATE : 7 OCTOBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application to set aside the order of closure of the Defendants' evidence on account of the failure of the Defendants to file affidavit in lieu of examination in chief and compilation of documents, in terms of the order dated 25 April 2024.
3. In the application, it is averred that the delay on the part of the applicant-Defendants to file affidavit of evidence, affidavit of documents and compilation of documents was on account of the circumstances beyond the control of the Defendants and it was not deliberate and intentional.
4. Learned Counsel for the Plaintiff opposed the prayer to set aside the

said order. It was submitted that despite ample opportunities, the Defendants have not led the evidence.

5. Though there is an element of delay on the part of the Defendants, yet, to advance the cause of substantive justice by promoting the determination of the lis on merits, I am inclined to allow the application and permit the Defendants to lead evidence. The delay and inconvenience caused to the Plaintiff can be taken care of by imposing costs.

6. Hence, the following order :

ORDER

(i) The application stands allowed.

(ii) The Applicant-Defendants are permitted to file affidavit in lieu of examination in chief, affidavit of documents and compilation of documents within a period of two weeks, subject to payment of costs of Rs.15,000/- to the Plaintiff.

(iii) Payment of costs of Rs.15,000/- shall be a condition precedent.

(iv) In the event of default on the part of the Defendants to pay the costs and file affidavit in lieu of examination in chief, affidavit of documents and compilation of documents, within the said period of two weeks, this order shall stand recalled and the order dated 25 April 2024 restored without further reference to the Court.

(v) In the event, affidavit in lieu of examination in chief, affidavit of

documents and compilation of documents are filed and copies served on the Plaintiff, the latter shall make statement of admission and denial of the documents within a period of one week thereafter.

(vi) The Defendant's witness(es) who file affidavit(s) in lieu of examination in chief shall remain present before the Court on 12 November 2024 for recording further evidence and marking of documents.

(vii) Interim Application stands disposed.

(N.J.JAMADAR, J.)