

Balarum Dattu Pawse and Ors. ... Respondents

adjournment, and, the instant application to set aside the order dated 19th September 2024 and lead the evidence came to be filed on 11th December 2024.

5. Evidently, the trial in Special Civil Suit No. 182 of 1999 has been delayed in some measure on account of acts and conduct attributable to the defendants. Nonetheless, the fact remains that, within a short period, the petitioner /defendant no. 1 has moved an application to recall the order foreclosing the right of the defendant no. 1 to lead evidence. The said application was accompanied by the affidavit in lieu of Examination-in-Chief of defendant no. 1.

6. In this view of the matter to advance the cause of substantive justice, it may be expedient to provide an effective opportunity to adduce evidence to the defendant no. 1.

7. Learned counsel for the defendant no. 1, submitted that defendant no. 1 will not examine any further witnesses, in his defence.

8. The aforesaid statement is accepted.

9. Thus, the petition deserves to be allowed subject to certain conditions.

10. Hence, the following order:

ORDER

i) Petition stands allowed.

ii) The impugned order dated 1st February 2025 stands quashed and set aside. The application to recall the order foreclosing the right of

defendant to lead evidence, stands allowed.

iii) Order dated 19th September 2022 passed by the Trial Court stands set aside.

iv) The petitioner/defendant no. 1 is permitted to file affidavit in lieu of Examination in Chief, subject to following conditions:

- a) The petitioner/defendant no. 1 shall pay costs of Rs. 20,000/- to the plaintiff.
- b) The defendant no. 1 shall not seek any adjournment.
- c) The defendant no. 1 shall make himself available for cross-examination and shall not seek any adjournment for the said purpose.
- d) Otherwise also, defendant no. 1 shall not seek any adjournment during the further trial of the said suit.
- f) The costs be paid within a period of three weeks from the date of uploading of this order.

The petition stands disposed.

(N.J. JAMADAR, J)