



2025:DHC:4971



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 28.05.2025***+ **CM(M) 2425/2024, CM APPL. 24573/2024, CM APPL. 24574/2024, CM APPL. 18745/2025**

PEEYUSH JAIN

.....Petitioner

Through: Mr. Sumit Thakur, Adv. with
Petitioner in-person on VC

versus

GHASI RAM JAIN (SINCE DECEASED) THROUGH HIS LRS
AND ORS

.....Respondents

Through: Mr. Ankit Jain, Adv. for R-2
Mr. Gaurav Jain, Adv. for R-3
Mr. Dharam Chand Jain, L.R.1(b) of
R-1+ **CM(M) 2428/2024, CM APPL. 24582/2024, CM APPL. 24583/2024, CM APPL. 64728/2024, CM APPL. 64729/2024, CM APPL. 18742/2025, CM APPL. 18743/2025, CM APPL. 18744/2025, CM APPL. 26115/2025**

RAMESH CHAND JAIN

.....Petitioner

Through: Petitioner in-person

versus

GHASI RAM JAIN (SINCE DECEASED) THROUGH HIS LRS
AND ORS

.....Respondent

Through: Mr. Ankit Jain, Adv. for R-2
Mr. Gaurav Jain, Adv. for R-3
Mr. Dharam Chand Jain, L.R.1(b) of
R-1.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. These matters have been received on transfer.
2. The present Petitions have been filed under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure,



1908 [hereinafter referred to as "CPC"] seeking to challenge the order dated 12.04.2024 passed by the learned DJ-05, South West, Dwarka Courts, Delhi [hereinafter jointly referred to as the "Impugned Order"]. By the Impugned Order, the learned Trial Court has closed the evidence of the Petitioners and has decided several Applications, in an effort to expedite the hearing in the matter, given the pendency of the case, since the year 2000.

3. This Court had on 01.04.2025 examined the Impugned Order and passed the following directions:

“2. The record reflects that these Petitions seek to challenge various orders including orders dated 05.02.2024, 06.02.2024, 22.03.2024 and 12.04.2024 passed by the learned Trial Court.

3. A Coordinate Bench of this Court has on 29.04.2024 directed that no final arguments be heard by the learned Trial Court, and thereafter, the matters have continued as is.

4. Learned Counsel for the Respondents contend that there are 20 *inter se* litigations pending between the parties, and that there have been several Petitions filed before this Court challenging the orders passed by the learned Trial Court from time to time, and that these petitions have been filed merely to delay the proceedings before the learned Trial Court.

5. The record reflects that CM(M) 2216/2024 has been filed seeking to challenge the orders dated 05.02.2024 and 06.02.2024 passed by learned ADJ-04, South West, Dwarka Courts, Delhi, whereby the permission to recall Defendant No.2 (Respondent No. 3) as a witness for cross-examination was declined. The order impugned sets out that this witness has already been cross-examined 15 times since 2018. Despite the foregoing, the additional opportunity is sought to cross-examine the said witness.

6. CM(M) 2355/2024 has been filed seeking to challenge the order dated 22.03.2024 passed by learned ADJ-04, South West, Dwarka Courts, Delhi, whereby the opportunity to lead evidence by Defendant No.5 (Petitioner) has been closed. The order impugned in this case records that the learned Trial Court had directed that given the fact that this matter is amongst the 75 oldest cases, the trial would be done day to day, however, the Defendant No.5, who is a practicing advocate had refused to appear citing that he is a busy lawyer and has to argue other matters.

7. CM(M) 2425/2024 and CM(M) 2428/2024 both impugn the order dated 12.04.2024, which has also been passed by the learned Trial Court deciding several Applications, in an effort to expedite the hearing in the



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matter, given the pendency of the case.

7.1 The order dated 12.04.2024 decides several applications all filed on behalf of Defendant No.3 (Respondent No.4) including:

- (a) Application under Order XLVII Rule 1 r/w Rule 114 of Code of Civil Procedure, 1908 (CPC) seeking waiver of costs and expunging of adverse remarks;
- (b) Application under Section 151 of CPC issuing directions to record a statement that no further witness or evidence shall be led by them: and
- (c) Application under Section 151 of CPC for early disposal of application under Order XII Rule 6 of CPC.

8. It is apposite to extract paragraphs 4, 5 and 6 of the order dated 12.04.2024, which reflects this and is set out below:

“4. The present case has been notified under the category of 75 oldest cases of South West District, Dwarka Courts for expeditious disposal by Hon'ble High Court of Delhi vide reference dt. 12.09.2023 and till date, this court has given atleast 26 effective hearings to ensure that fair trial should be conducted but, frequent adjournments sought by respective parties for one or other reason. During this period multiple applications/CM(M) were filed by parties i.e. as follows:

S.No.	Date	Particulars
1	14.08.2000	A suit for partition and permanent injunction was instituted by Sh. Ghasi Ram Jain (now deceased) against his three brothers i.e. the respondent no. 2/ Pad am Chand Jain, Sh. Prem Chand Jain i.e. respondent no. 3(now deceased) and Sh. Ramesh Chand Jain/ defendant no. 3/respondent no. 4 herein
2	3.11.2000 to 28.11.2000	Separate Written statements were filed by defendant nos. 1 to 3 to the above suit
3	22.03.2001	Stay application moved under order 39 rule 1 and 2 of CPC of the plaintiff disposed off
4	09.04.2001	Plaintiff had instituted FAO vide bearing no. 278/2001 against the said order dated 22.03.2001 and later 4 issues for the entire suit property were framed.
5	25.02.2002	The plaintiff had moved an application under order 6 rule 17 which was allowed in terms of the order of 06.01.2004.



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6	12.05.2003	FAO no. 278/ 2001 was disposed off
7	05 .02 .2004	Amended plaint by the plaintiff taken on record
8	30.04.2005	Application under order 1 rule 10 of CPC moved by the petitioner herein and respondent no. 5 for implementing them as additional defendants no. 4 and 5
9	28.05.2005	Application U/o 1 rule 10 allowed by Ld. Trial Comi
10	15.11.2010	Application U/o 6 rule 17 CPC filed by the plaintiff
11	21.05.2011	Amendment in the counterclaim of the defendant no. 3 to 5 was sought by way of separate amendment appln.
12	04.02.2012	Five fresh issues were framed
13	19.03.2012 to 13.8.2013	The evidence on behalf of the plaintiff was to commence and the cross-examination of the plaintiff witnesses were concluded on behalf of deft. no. 1.
14	13.08.2013 to 1.09.2017	The cross-examination of the plaintiff for and on to behalf of Defendant no. 2 and was finally completed by 01.09.2017 only i.e. after more than 4 years.
15	29.09.2015	An application was moved by the respondent no. 4 herein/ defendant no. 3 for the purposes of expeditious disposal of the suit by getting the evidence of the parties recorded through L.C.
16	23.09.2017	The affidavit of evidence of the witness DW- 1 was supplied to the LR of the plaintiff only on this date
17	24.11.2017	An application under order 12 rule 6 was also filed on this date on behalf of defendant no. 4 and 5.
18	20.12.2018	Witness DW-1 Padam Chand Jain cross-examined and discharged
19	08.01.2019 to 24.01.2019	Defence witness Satish Jain examined, cross examined and discharged
20	24.07.2019	Application under order 12 rule 6 CPC allowed and preliminary decree passed in favour of Deft no. 4 & 5



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21	15.12.2022	<i>D1W2 and DW2 failed to appear for cross examination and their rights to depose were closed.</i>
22	19.10.2023	<i>One last opportunity given to defendant no. 1 and 2 to lead the evidence by Hon'ble High Court of Delhi</i>
23	21.10.2023	<i>Vakalatnama filed a new counsel for Defendant no. 3. Cross examination of Defendant no. 2 by plaintiff</i>
24	27.10.2023	<i>Further cross examination of Deft no. 2 by plaintiff</i>
25	08.11.2023	<i>Cross examination of Defendant no. 2 concluded by plaintiff. Son of Counsel of Defendant no.3 in hospital for surgery</i>
26	20.11.2023	<i>Steno not available</i>
27	08.12.2023	<i>Issues reframed, Steno not available</i>
28	06.01.2024	<i>Judge on leave</i>
29	12.01.2024	<i>Counsel of deft no. 3 suffering from lung infection</i>
30	27.01.2024	<i>Judge on leave. Application filed by Defendant no. 3 u/s 151 CPC for day to day hearing from 12.02.2024 to 15.02.2024 and on 23.02.2024</i>
31	29.01.2024	<i>Application of Defendant no. 3 u/s 151 CPC dismissed and Ld. Trial Court ordered for day-to-day hearing as per the convenience of the court from 30.01.2024 onwards & rejected the submissions of deft no. 3 & 5</i>
32	30.01.2024	<i>Defendant no. 2 cross examined by the counsel of Defendant no.3. Day-to-day hearing date fixed, Counterclaims clubbed without providing an opportunity to the defendant nos. 3 to 5 cross-examine the plaintiff and defendant no. 1. The entire submissions of defendants 3 to 5 on review petitions not recorded. Wrong observation of 10 effective dates of hearing for evidence of DW2 and D I W2</i>
33	03.02.2024	<i>Cross-examination by Deft 3 & 4. Court asked for the possibility of passing a final decree in favour of deft no. 4 & 5, and the court was adjourned on joint request of all the parties, however the same was not reflected in the order.</i>



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34	06.02.2024	List of witnesses filed by Defendant no. 3. Cross Examination Of DW-2 by Defendant no. 4
35	12.02.2024	Affidavit in evidence alongwith list of witnesses filed by Defendant nos. 4 and 5. Application by defendant no. 3 for Order VIII Rule 1A(3) CPC
36	13.02.2024	List of witnesses filed by deft no. 3, 4 and 5 were rejected without hearing the counsel of deft no. 3 and 5 and without recording the submissions of deft no. 4. Dates fixed for further cross-examination of Deft no. 3, 4 and 5 as per availability of counsel of deft no. 1 and 2. DW-2 cross-examined and discharged by counsel of Deft no. 5
37	17.02.2024 19.02.2024	Cross-examination of DIW2 by plaintiff and & Defendant no. 3
38	20.02.2024	Right of Deft no. 4 to cross-examine D 1 W2 closed
39	21.02.2024	Cross-examination of D 1 W2 concluded by Deft no. 5. Notice of appln U/o 12 rule 6 CPC issued for 4 weeks followed by another 2 weeks for filing rejoinder
40	11.03.2024	This Hon'ble Court was pleased to allow the petitioner to cross-examine DIW2 Bimal Prasad Jain for a day vide order dated 11.03.2024 passed in CM(Main) No. 2067/ 2024.
41	13.03.2024	13.03.2024 Cross-examination of DW-3 fixed for 12.04.2024
42	19.03.2024 D1 W2	D1 W2 Sh. Bimal Prasad Jain further cross-examined on behalf of defendant no. 4 and discharged
43	21.03.2024	Reply to the application U/o XII Rule 6 CPC filed on behalf of deft no. 4 & 5. Application seeking early disposal of application u/o XII Rule 6 CPC by D3
44	22.03.2024	22.03.2024 Opportunity to lead DE by defendant no. 5 closed
45	23 .03.2024	23 .03.2024 Evidence by deft 4, next date of hearing 09.04.2024
46	09.04.2024	Cross-examination of Defendant no. 4 on behalf of plaintiff concluded



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47	10.04.2024	Order on 3 pending CM Main petitions by this Hon'ble Court with directions to the Ld. Trial Court
48	12 .04.2024	Applications moved by defendant no. 3 to 5 will comply with the directions of this Hon'ble Court. Application on order 12 rule 6 CPC not disposed of. Rights of DW3 and DW4/ petitioner to lead evidence, review application and summon other witnesses also closed. Next date of hearing 01.05.2024 for final arguments

5. In fact, today during the proceedings, Ld. Counsel for defendant no. 4 warned **this court that, this matter would go up to Hon'ble Supreme Court of India.**

6. Thus, from the conduct of the parties, it is clear that they want to **manipulate legal proceedings by seeking frequent adjournments, making frivolous comments/remarks, filing multiple/copies of documents to make record voluminous and shouting in open court so that matter could be delayed. In fact, during today's proceedings, Ld. Counsel for the defendant No. 1 and 2 bring to the notice of this court about presence of defendant no.3 outside the courtroom** but, same was highly disputed by Ld. Counsel for the defendant no. 3 who stated that, defendant no. 3 is not available today.”

[Emphasis supplied]

8.1 It is also apposite to extract paragraphs 19, 20, 25 and 29 of the order dated 12.04.2024.

“19. Since, subject matter of both applications are interlinked, both are taken simultaneously. At this juncture, it would be imperative IS reproduced to issues involved in all three suit/counter claims as below:

SUIT NO.	TITLE	ISSUES
CS No. 417/11/2000	Ghasi Ram Jain v. Padam Chand & ANR	1. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? Onus on plaintiff. 2. Whether there is already party / family settlement between the parties in the year 1966 and 1974? Onus upon defendant No. 1 and 2. 3. Whether the residential houses existing on Kh. No. 6012112 were constructed after the death of Shri Har Sahai Mal Jain? Onus on defendant no. 1 and 2.



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		4. Whether the plaintiff is entitled to the relief of partition as prayed? 5. Whether the plaintiff is entitled to claim perpetual injunction as prayed?'
Counter Claim No. 16826/16	Peeyush Jain & ANR Vs. Ghasi Ram Jain & Ors	1. Whether the defendant no. 4 and 5 / counter claimant are entitled for preliminary decree of partition in respect of 1/4th share falling in Kh. No. 60/21/2 comprising of 2 bigha and 10 biswa of land purchased from defendant no. 1? Onus on counter claimant
Counter Claim No. 516881/16	Ramesh Chand Jain & ANR Vs. Ghasi Ram Jain & Ors	1. Whether counter-claimant no. 3 is entitled to relief?

20. It is worthwhile to mention here that, defendant no. 3 didn't himself came to the witness box despite multiple opportunities and imposition of costs but, strongly pressed upon above applications alongwith defendant No.4 (who is son of defendant No. 3) for summoning of witnesses to bring earlier legal proceedings, mutation and Assessment record etc.

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25. It is well settled law that, where a party is acting in a recalcitrant fashion, and refusing to make the witness available for examination or cross-examination on repeated occasions without due justification, the court may close the party's right to lead evidence. **Since defendant No. 3 and 4 were not present for evidence despite repetitive/specific directions, their right to lead DE stands closed. Record reveals that DE was already closed on behalf of defendant No. 5 vide order dated 22.03.2024. Accordingly, defendant evidence stands closed in its entirety.**

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29. Although, Preliminary Submissions heard by this court but, considering the facts and circumstance of present case and material placed on record as well as considering the conduct of the parties and the fact that there are **more than 20 other litigations are pending between the parties qua suit property, this court is of the considered opinion that, the present matter is at the stage of fag end and can be decided in its entirety. Thus, to resolve** the entire controversy between the parties, matter is fixed for final argument and application u/o **XII Rule 6 CPC shall be taken up for further argument at the time of final arguments i.e. 01.05.2024.**"

[Emphasis supplied]



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9. List for hearing on 13.05.2025 at 1:00 pm.

10. In the meantime, the parties shall file their short note of contentions in the matter, not exceeding three pages each, at least three days before the next date of hearing, along with the compilation of judgments, if any, they wish to rely upon. All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

11. The Petitioners shall remain physically present before the Court on the next date of hearing.

12. The parties shall act based on the digitally signed copy of the order.”

[Emphasis Supplied]

4. On 13.05.2025, the Petitioners in these matters appeared in person and sought an adjournment. This was set out in detail in the order dated 16.05.2025 passed by this Court, which is extracted below:

“1. Mr. Dharam Chand Jain, LR 1(b) to Respondent No. 1 appears in person and submits that he is Plaintiff before the learned Trial Court and he was also present before the Court on 13.05.2025. Learned Counsel for the Respondents affirms this contention.

1.1 Accordingly, the order dated 13.05.2025 be reflected to include the presence of Mr. Dharam Chand Jain.

2. This matter was heard by this Court on 01.04.2025 and a detailed order was passed. The matter was thereafter listed on 13.05.2025 for hearing at a fixed time, in the presence of all parties.

3. On 13.05.2025, the matter was passed over on the first call since the learned Counsel and the parties appearing stated that they have engaged a senior Counsel in the matter. The matter was then called out after the pass over matters for the second time and at the request of the Petitioner the matter was called out at the end of the Board. However, despite the matter being called out thrice, no arguments were advanced by the Petitioner and an adjournment was sought for. The matter was thus, adjourned at the Petitioner’s request for today.

4. Today, an adjournment slip has been circulated on behalf of the Petitioners. Learned Counsel for the Respondents object to the request for adjournment.

5. In the interest of justice, the request for adjournment is acceded to, subject to payment of costs in the sum of Rs. 10,000/- payable by each of



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the Petitioners directly, into the account of “*Delhi High Court Bar Association Cost account*” within three days from today. Proof of costs be filed before the next date of hearing.

6. List on 20.05.2025.”

5. On 20.05.2025, two fresh Applications were filed by the Petitioners and on that date, this Court had directed the following:

**“CM APPL. 30854/2025 In CM(M) 2425/2024 [For amicus/suitable lawyer]
CM APPL. 30803/2025 In CM(M) 2428/2024 [For legal aid/amicus]**

1. These are Applications filed on behalf of the Petitioners requesting for some time to engage a new counsel/amicus curiae.

1.1 These matters were heard by this Court on 01.04.2025 and a detailed order was passed. The matters were thereafter listed on 13.05.2025 for hearing at a fixed time, in the presence of all parties.

1.2 On 13.05.2025, the matters were passed over on the first call since the learned Counsel and the parties appearing stated that they have engaged a senior Counsel in the matter. The matter was then called out after the pass over matters for the second time and at the request of the Petitioner the matters were called out at the end of the Board. However, despite the matters being called out thrice, no arguments were advanced by the Petitioner and an adjournment was sought for. The matters were thus, adjourned at the Petitioner’s request for 16.05.2025.

2. An adjournment slip was circulated on behalf of the Petitioners on 16.05.2025, and on that date, the adjournment was granted subject to payment of costs.

3. In view of the discussions above, the Petitioner in CM(M) 2425/2024 shall deposit the costs as imposed on 16.05.2025 before the next date of hearing.

4. The Petitioner in CM(M) 2428/2024, Mr. Ramesh Chand Jain, appears in person and submits that he is a senior citizen with no source of income.

4.1 Accordingly, the costs as imposed on 16.05.2025 for the Petitioner in CM(M) 2428/2024 are hereby waived.

5. The Petitioners are at liberty to approach the Delhi High Court Legal Services Committee to engage a new Counsel in accordance with the Section 12 of the Legal Service Authorities Act, 1987.

6. The Applications are disposed of accordingly.

CM(M) 2425/2024
CM(M) 2428/2024



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7. Both the Petitions seek to challenge an order dated 12.04.2024 passed by learned ADJ-04, South West, Dwarka Courts, Delhi [hereinafter referred to as the “Impugned Order”]. By the Impugned Order, the matter was fixed for final arguments under Order XII Rule 6 of the Code of Civil Procedure, 1908.

8. **The reason for fixing short dates in these matters is two-fold. Firstly, that the suit has been pending before the learned Trial Court since the year 2000 and is amongst 75 oldest cases of South West District, Dwarka Courts, Delhi. Secondly, a Coordinate Bench of this Court had by an order dated 29.04.2024 directed that the proceedings before the learned Trial Court be kept in abeyance.**

8.1 **It is also not disputed by either party that the proceedings before the learned Trial Court were at the stage of final arguments, before the proceedings were stayed by a Coordinate Bench of this Court.**

9. At the request of the Petitioners, list on 27.05.2025.

10. It is **clarified that no further adjournment will be granted to the Petitioners.**

[Emphasis Supplied]

6. As has been set out above, the challenge in the present Petitions is to an order dated 12.04.2024 by which the right of cross-examination of the Petitioner (Defendant No.4 before the learned Trial Court) in CM(M) 2425/2024 and the Petitioner (Defendant No.3 before the learned Trial Court) in CM(M) 2428/2024. By the Impugned Order, the rights of the Petitioners/Defendants to present evidence were closed by the learned Trial Court in view of the fact that despite repeated specific directions, adjournments were being taken by the Petitioners/Defendants. The finding of the learned Trial Court in this behalf is extracted below:

“25. It is well settled law that, where a party is acting in a recalcitrant fashion, and refusing to make the witness available for examination or cross-examination on repeated occasions without due justification, the court may close the party's right to lead evidence. Since defendant No. 3 and 4 were not present for evidence despite repetitive/specific directions, their right to lead DE stands closed. Record reveals that DE was already closed on behalf of defendant No. 5 vide order dated 22.03.2024. Accordingly, defendant evidence stands closed in its entirety.”



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7. In addition, the Impugned Order dated 12.04.2024 also decided an Application under Order XII Rule 6 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] filed by the Petitioner/Defendant No.3 in CM(M) 2428/2024.

8. As has been set out above, the suit was filed in the year 2000 and is amongst the 75 oldest cases pending before the District Court at Dwarka, Delhi.

8.1 The record further reflects that the learned Trial Court had, by its order dated 13.02.2024, fixed a schedule for evidence in view of the fact that repeated applications for various reasons were filed during the evidence stage. It was also clearly set out in the order dated 13.02.2024 passed by the learned Trial Court that if the parties failed to appear on the scheduled date, the right of the parties shall be closed and the matter shall proceed. Despite the clear and unequivocal directions of the learned Trial Court, there was no appearance on behalf of the Petitioners and the evidence of the Petitioners/Defendants were closed by the learned Trial Court.

9. Learned Counsel for the parties have been briefly heard.

10. Learned Counsel for the Respondent No.2 (Defendant No.1 before the learned Trial Court) and Respondent No.3 (Defendant No.2 before the learned Trial Court) submit that the Respondent Nos.2 and 3 are the main contesting parties in the suit for partition *inter se* the families of the siblings.

11. Learned Counsel for the Petitioner in CM(M) 2425/2024 and the Petitioner in CM(M) 2428/2024, who is physically present before the Court, jointly submit that one opportunity may be granted to the Petitioners/Defendants before the learned Trial Court to present their



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evidence, and the Petitioners/Defendants would close the evidence within three dates.

12. Considering the lapse of time, this Court deems it apposite to grant two dates to both the Petitioners/Defendants in CM (M) 2425/2024 and CM (M) 2428/2024 to close their evidence,

13. Accordingly, the Impugned Order dated 12.04.2024 are modified to a limited extent of permitting two additional dates for the cross-examinations of the Petitioners/Defendants. This will, however be subject to the payment of costs as set out in paragraph 21 herein below.

14. The learned Trial Court is also at liberty to grant additional time if it deems fit, in the event that a third date is requisite for the evidence.

15. Learned Counsel for the parties, on instructions, and the Petitioner/Defendant No.3 in CM(M) 2428/2024 submit that the parties will remain present at the date and time fixed by the learned Trial Court for the cross-examination. In the event of their absence, no further time shall be granted to the parties.

16. Learned Counsel for the parties and the Petitioner in CM(M) 2428/2024 also submit that they will not undertake any repetitive questioning during the cross-examination to ensure that there is no wastage of time, given the schedule as set out by this Court.

17. The parties are bound down by the statement made by their Counsel before this Court today.

17.1 The Petitioner/Defendant No.3 is also bound down by the statement made by him before this Court today.



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18. Accordingly, the parties shall appear before the learned Trial Court on 26.07.2025 i.e. the date already fixed.
19. It is made clear that this Court has not examined the matter on merits. The rights and contentions of both parties on the merits of the case are left open to be agitated before the learned Trial Court.
20. The Petitions are disposed of in the foregoing terms. All pending Applications stand closed.
21. The Petitioners shall pay costs in the sum of Rs.7,500/- each payable to “DHCBA Cost A/c No. 15530110179338”. The proof of costs shall be filed within a period of five weeks before the learned Trial Court.
22. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 28, 2025/jn/ha

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