

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4291 OF 2026

Ashok Motilal Katariya and ors. ...Petitioners

Versus

Parvatibai Ghamanrao Tidke and ors. ...Respondents

Mr. Nitin Gaware Patil, a/w Sriraj Menon, Sandesh Panchal,
i/b Satyaki Law Associates, for the Petitioners.

Mr. P. M. Haridas, a/w Tushar Sonawane, for Respondent Nos.2
and 3.

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CORAM: N. J. JAMADAR, J.

DATED: 21st APRIL, 2026

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 30th March, 2026, whereby an application preferred by the petitioner for discarding the evidence came to be rejected by the learned Civil Judge.
3. The suit has been instituted in the year 1993. It appears the learned Civil Judge is making an earnest endeavour to dispose of the suit which is more than 25 years old. The learned Civil Judge by an order dated 25th March, 2026 has allowed an application preferred by the petitioner – defendants to set aside the order forfeiting the right of the defendants to

adduce evidence subject to the condition that the trial shall be conducted on day to day basis and, at any rate, at the interval of not more than 2 to 3 days.

4. On 30th March, 2026, it seems adjournment was sought on the ground that the defendant No.1 was unwell and was required to avail treatment at Hunduja Hospital, Mumbai. Noting that there was non-compliance of the directions in the earlier order dated 26th March, 2026, the learned Civil Judge rejected the application.

5. The Court is informed that the suit is posted before the learned Civil Judge on 23rd April, 2026.

6. Mr. Haridas, the learned Counsel for the respondents – plaintiffs, invited the attention of the Court to an order passed by the learned Principal District Judge in Civil MA No.42/2026, whereby an application preferred by the petitioners for transfer of the suit from the file of the learned Judge, who is seized with the suit, to another Court, came to be rejected. It was submitted that the said fact was suppressed from this Court.

7. Mr. Gaware Patil, the learned Counsel for the petitioners, submitted that the Advocate on record was not properly

instructed with regard to the filing of the said application for transfer.

8. Though there appears to be an amount of indolence on the part of the defendants in proceeding with the trial in the suit, yet, having regard to the reasons ascribed for adjournment on 27th March, 2026, and with a view to provide an efficacious opportunity of hearing and to rule out the possibility of prejudice to the defendants, this Court is inclined to provide an opportunity to the defendant No.1 to show *bona fide* by appearing before the Court on 23rd April, 2026 and subject himself to cross-examination.

9. The petition, thus, stands allowed.

10. The impugned order dated 30th March, 2026 stands quashed and set aside.

11. The order discarding the affidavit in lieu of examination-in-chief of the petitioner – defendant No.1, also stands quashed and set aside.

12. The affidavit in lieu of examination-in-chief filed by defendant No.1 stands restored to file.

13. The petitioners – defendants are permitted to adduce evidence.

14. On 23rd April, 2026, the defendant No.1 shall appear before the learned Civil Judge and offer himself for cross-examination.

15. The petitioners shall not seek any adjournment on any count whatsoever.

16. If the defendant No.1 does not appear before the Court on 23rd April, 2026 and offer himself for cross-examination, this order shall stand recalled and the order passed by the learned Civil Judge shall become operative and enforceable.

17. The petition stands disposed.

[N. J. JAMADAR, J.]