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D2 - FNN

D1 to 3 - CSM

D4 - SSH

D5 - ATP

For Hy on 11/10/16

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standing on on 11/10/16



11/10/16

(O.S. No 124/2017)

16/2017

ORDER ON J.A NO 14 TO 16.

The Defendant No 4 has filed J.A No 14 u/section 151 of C.P.C seeking reopening of Def No 4 side of evidence and J.A No 15 u/18 Rule 17 R/W 151 of C.P.C seeking order to recall the evidence of Defendant No 4 to adduce further evidence from his side and also filed J.A No 16 u/18 Rule 1-A of C.P.C seeking permission of this court to produce list with documents,

2. These J.A No 14 to 16 are interlinked with each other, hence, taken together for common order.

3. The Defendant No 4 has filed sworn affidavit and stated that on 19/07/2019 this court had taken evidence of Defendant No 4 as Nil. Now he wants to produce documents on his side, hence, it is necessary to recall the order dated 19/07/2019. It is also stated that there is no intentional delay in producing documents but, it was for bonafide reasons as he could not produce the document in time.

4) Per contra, the plaintiff has filed counter to the said application, and contended that, there is no necessity to recall the evidence of Defendant No 4 as the documents in respect of O.S. No 912017 are not relevant to the present matter. The documents are not binding on plaintiff's side and in order to dupe the plaintiff the defendant No 4 has filed plaintiff applications which are not tenable by law. Hence, prayed to dismiss the J.A with cost.

5. Heard both side and perused the records.

6. It appears on perusal of the materials that S.O. No. 16 to 16 are related to recall the order of this court dated 19/07/2019 which speaks "as Def No. 4 called out absent, No Representation, hence def No. 4 evidence taken as Nil." Now, by filing pleader applications the defendant No. 4 wanted to place his case that the said order may be recalled and he may be permitted to lead his evidence. To substantiate his claim over all these application the defendant No. 4 only contention is that, on 19/07/2019 the case was set down for further evidence and evidence was taken as Nil. There was a delay in obtaining certified copies of O.S. No. 92017 hence, he could not proceed with the case, hence, now he obtained same and wanted to place in his evidence.

7. This defendant No. 4 admits that, his case was set down for his evidence on 19/07/2019 and order respect of his evidence taken as Nil. Keeping in mind of the same whether defendant No. 4 had any circumstances in obtaining certified copy of O.S. No. 92017 in belated time? The answer is No because more than 5 years have been lapsed in getting certified copies of the same. There is no due diligence placed by the defendant No. 4 that, there is a sufficient reason that he could not get the certified copies in time. Absolutely, there is negligence on part of Def. No. 4 that to keeping mum for last 5 years, although, the defendant No. 4 wanted to place his evidence on documents which can not be thrown out, from natural justice.

on defendant No 4 past negligence act when he again applies to the court to correct his act. There, fore, in order not to restrict the natural Justice, that litigation should not be terminated by default either on act of plaintiff or defendant but adjudication must be done on merits. Hence, for the I conclude my reasonings by giving considered opinion that an opportunity deserves need to be given to the defendant to place evidence on relevant facts only, on cost of Rs. 5000. Therefore, I directed to pass the following,

ORDER

The S.A No 14 to 16 filed by the Defendant No 4 seeking order to recall order of the court dated 19.01.19, and seeking permission read by further evidence on documents, is hereby allowed on cost of Rs 5000.



N.M. Bahallimath

Resultantly, Defendant No 4 side of evidence is reopen subject to condition to conclude by evidence on next date of hearing without fail.

For evidence of Defendant No 4 and payment of cost call on 17/02/2017.



Sunit S. Pawar
Sr. Civil Judge, Bhegaon,
sitting at Savanur.