



Summary Cases/5800030/2021

MR. MOTI PARTABRAI TOLANI Vs. MRS. REHANA HYDER GOLA

IN THE COURT OF THE METROPOLITAN MAGISTRATE, 58TH COURT,
BANDRA, MUMBAI
ORDER BELOW APPLICATION EXH.44

This is the application filed for setting aside 'No cross' order came to be passed against the accused. It is contended on behalf of the accused that the earlier advocate was not in position to take cross examination of the complainant due to not giving instructions by the client. The accused has good case on merit etc. Hence this application.

2. The complainant objected the application vide detailed reply. The sum and substance of the reply of the complainant is that accused is intending to prolong the hearing of the case. Accordingly, prayed for rejecting the application.

3. Before considering merits of the application, it is pertinent to note that the accused was informed about expediting the trial on the ground of complainant being senior citizen vide speaking order below application Exh.21. Said order was passed in open court in presence of parties on 04.12.2023. The complainant had already adduced his evidence on affidavit in the year 2022. Thereafter, accused and his advocate remained absent and as such no cross order came to be passed on 20.01.2024.

4. The record and proceeding speaks for the things occurred in the trial. There is reason to believe from the conduct of the accused that he is protracting the trial without just cause. The accused was given prior intimation vide order below Exh.21, so as to exercise his right of cross examination. The willful conduct of remaining absent and not exercising the right of cross examination by the accused or his

advocate is more than sufficient to draw an adverse inference against them. Today also accused is absent which shows that he is happy only in keeping the matter lingering.

5. There cannot be any dispute that in adversary system of litigation accused has important right to cross examine witnesses of adversary. The said right is in fact a substantive right, to be exercised as per the limitation imposed by the statute. It can not continue for indefinite period. If the right to cross examine is not exercised with due diligence, same can be taken off by passing no cross order. Hence, the right claimed by the accused is not absolute and indefeasible right.

6. However, in order to hear both parties on merits, the accused needs to be given an opportunity subject to saddling heavy costs for compensating the complainant who is senior citizen. It should not happen that accused has not given an opportunity to raise his defence. Hence, I pass following order.

ORDER

1. Application is allowed subject to costs of Rs.10,000/- to be paid to the complainant within 15 days from today.
2. Costs are condition precedent to exercise right of cross examination.
3. Advocate on record for the accused to take note that complainant is senior citizen and the trial is expedited vide order dated 04.12.2023.
4. Order dictated and pronounced in open court.

Mumbai,
Dated : 21.06.2024.

(M. P. Saraf)
Metropolitan Magistrate,
58th Court, Bandra, Mumbai.
J.O.Code-MH01362

CERTIFICATE

I affirm that the contents of this P.D.F file Order are same, word to word as per the original Order.

Name of Stenographer : Mrs. Aditi Ravikiran Dalvi
Court : Metropolitan Magistrate, 58th Court, Bandra,
Mumbai.
Dictated in open court on : 21.06.2024.
Transcribed and Typed on : 21.06.2024.
Order printed and Signed on : 21.06.2024.
Order Uploaded on : 21.06.2024.