

Sudhir Vishwanath Raut ..... Plaintiff

Versus

1) Malan Kashinath Raut ..... Defendants

**ORDER BELOW EXHIBIT 85**

1. The defendant number 1 & 2 have filed the application vide exhibit 85 for setting aside no cross-examination order. The defendant number 1 & 2 have stated that, due to absence of advocate of defendants, no cross order was passed. The defendant number 1 & 2 have further stated that, opportunity must be given to these defendants for cross-examination of plaintiff.

2. The plaintiff has filed say vide exhibit 85 and raised strong objection. The plaintiff has stated that, the application is false and vexatious. Hence, it is to be rejected. If application is allowed, cost of Rs.15,000/- be imposed on defendants.

3. I have perused the application vide exhibit 85 and say of plaintiff vide exhibit 85. I have heard both sides. The following points arise for my determination.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Are defendant number 1 & 2 entitled for setting aside 'no cross examination order' ?	Yes

2	What is order ?	The application is allowed.
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### **REASONS**

#### **As to point number 1 and 2**

4. The point number 1 & 2 are interlinked with each other. Hence, I have clubbed them together and discussed accordingly. The suit is for partition and declaration. The nature of suit is such that, if the opportunity for cross-examination is denied to defendant number 1 & 2 then it will affect the merit of case. It may result into multiplicity of proceeding. 'Audi alteram partem' is principle of natural justice. It means that no one shall be condemned unheard. Hence, it is just and proper to give opportunity to defendant number 1 & 2 for cross-examination. The defendants have stated that, their advocate was absent. Hence, cross-examination of plaintiff was not conducted. The reason stated by defendant number 1 & 2 for setting aside no cross order is sufficient. The circumstances were beyond the control of defendant number 1 & 2. Hence, it will not be proper to saddle the cost on shoulder of defendant number 1 & 2, after considering the circumstances. Therefore, the present application is to be allowed. In the result, the following order is passed.

### **ORDER**

1. The application vide exhibit 85 is allowed.

2. The no cross order passed against the defendant number 1 & 2 is hereby set aside and defendant number 1 & 2 are permitted to conduct cross-examination of plaintiff.
3. The defendant number 1 & 2 must proceed with cross-examination of plaintiff on next date.
4. The suit shall proceed further according to provisions of law.

Shrigonda  
Date – 08/09/2022

**Sd/-**  
**Smt. K. A. Katkar**  
Joint C. J. J. D, Shrigonda

**: C E R T I F I C A T E :**

I affirm that the contents of this pdf file order are same words as per original Order.

Case No.	:	RCS 446/2012
Name of Stenographer	:	Smt. S. V. Jadhav
Court Name	:	Joint Civil Judge Junior Division Shrigonda, Dist-Ahmednagar
Date of Decision	:	08/09/2022
Order signed by P.O. on	:	08/09/2022
Order uploaded on	:	08/09/2022