

ORDER BELOW EXH.117 IN R.C.S. No.223/2012

Present application has been placed on behalf of defendant no. 5 to stay the hearing of the suit, on the ground that the defendant no. 3 in present suit is missing and not traceable since year 2018. I must mention here that, absolutely, there is no provision in Code of Civil Procedure, 1908 enabling the court to stay hearing of the suit if one of several defendants is missing or he or she is not traceable. If any of the party is not approaching the pleader or he/she is avoiding to give necessary instructions to the pleader, court can proceed with the suit after the compliance of Civil Manual is made by the pleader of the party by sending the notice to the party through registered post and after compliance of the provision of Civil Manual, court can proceed with the suit without waiting for the appearance of the party. As per the contention of the defendant no. 5, defendant 3 is missing since year 2018. However, present application has been filed in the year 2022. Therefore, the question arises as to why defendant no. 5 has kept mum for a period of 4 year. From the record, it appears that defendant no.1 and 3 to 5 are appeared and submitted their written statement through common advocate. Even the plaintiffs and their witnesses are cross-examined by the advocate commonly appearing on behalf of defendant no.1 and 3 to 5. It is pertinent to mention here that till today, Ld. advocate appearing on behalf of defendant no.3 has not filed "no instruction" pursis. When the Ld. advocate appearing on behalf of defendant no.3 has not shown dis-interest to proceed with the suit in absence of defendant no.3,

no question arises as to stay the hearing of the present suit, especially when the present suit is 10 years old. As present application appears to have been filed with ulterior motive to delay the hearing of the suit, same deserves for rejection. In result, I pass following order:-

ORDER

Application at Exh.117 stands rejected.

Shrigonda
Date: 07/12/2022

(H. J. Pathan)
2nd Jt.Civil Judge(S.D.) Shrigonda