

MHAM160006202014



Order below Exh.59 in R.C.S. No. 29/2014
Sheshrao Vs. Janrao

1. Present application is moved by defendant thereby prayed to set aside 'evidence closed order' passed against him below Exh-01 on 02/01/2019.
2. The plaintiff filed his say on overleaf present application thereby submitted that present application is filed at belated stage. Hence, he prayed to reject present application.
3. The Ld. Advocate Bawankule for defendant submitted that the defendant filed his affidavit. However, his affidavit was forfeited by this Court on 20/12/2018. Thereupon, the defendant prayed to set aside said order and prayed to lead his evidence. This Court allowed said prayer. However, the defendant sought setting aside forfeited order without setting aside order passed below Exh.1 dated 02/01/2019. This was happened due to inadvertently. If opportunity to lead evidence is not provided to defendant then he may be prejudiced. The plaintiff is having right to cross-examine. Therefore, the plaintiff will not be prejudiced. With this, he prayed to allow present application.
4. The Ld. Advocate Mundwaik for plaintiff submitted that the defendant moved present application at belated stage. Therefore,

the defendant is not vigilant. Hence, he prayed to reject present application.

5. Perused the application and say thereon. Heard both sides.
6. Present suit is instituted by the plaintiff for declaration and injunction. Perusal of record shows that the defendant filed his affidavit on 13/06/2018. However, said affidavit was forfeited on 20/12/2018. Moreover, this Court passed order below Exh.1 on 02/01/2019 thereby closed evidence of defendant. It appears that the plaintiff filed an application (Exh.55) on 14/02/2019 for setting aside forfeited order. Said application was allowed subject to cost of Rs.300/- on 19/03/2019. It is seen that the defendant moved an application to set aside forfeited order without setting aside evidence closed order. The defendant ought to have move an application to set aside evidence closed order. However, the defendant failed to do so. The defendant submitted that said mistake was happened inadvertently. Perusal of say shows that the plaintiff did not seriously dispute said reason. The plaintiff submitted that the present application is moved at belated stage. Admittedly, the defendant moved present application is belated stage. However, right to defend is important right of the defendant. It seems that the defendant is ready to lead evidence. Moreover, present matter is related with immovable property. Therefore, interest of defendant is involved in present suit. Furthermore, right to fair trial is important right available with

party to suit. If present application is rejected then the right of defendant shall be defeated. It is well settled that procedural law is hand made of justice. Interest of justice can be achieved only when the fullest opportunity is given to parties to contest suit. If present application is allowed no prejudice will be caused to the plaintiff. He will be compensated in terms of money. Considering time period, I am of the opinion that Rs. 700/- will be proper cost to be imposed on defendant.

7. Considering all these reasons discussed above, I am of the opinion that for proper and effective adjudication of the present suit the present application deserves to be allowed. In result, I pass following order.

Order

- 1 Application is allowed subject to cost of Rs. 700/- (Seven hundred only).
- 2 The plaintiff is directed to pay Rs. 700/-(Seven hundred only) to plaintiff on or before next date.
- 3 Evidence closed order passed below Exh. 01 dated 02/01/2019 will be set aside after paying costs.

Date:- 01/01/2022

Place:- Nandgaon Kh.

(S.S.Gaikwad)
Civil Judge Jr. Div.,
Nandgaon Khandeshwar,
Distt. Amravati.

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

Name of the Stenographer	Smt. V. A. Suryawanshi (L.G.)
Name of Court	Civil Court Jr. Dn. Nandgaon Kh.
Date of Dictation	01/01/2022
Order signed by the P.O. on	01/01/2022
Order uploaded on	03/01/2022