

ORDER BELOW EXH. NO.54
(Passed on 26-10-2021)

1] By this application, the defendants are seeking permission to take cross-examination of plaintiff.

2] Read application and say. Heard, Shri. P. M. Kulkarni, the learned advocate for the defendants and Shri. N. G. Charde, the learned advocate for the plaintiff. Perused record of the case.

3] It is contended by the defendants that the matter was fixed on 06.03.2020 for cross examination of the plaintiff. But, on that day the advocate of defendants was absent due to unavoidable circumstances, therefore, cross-examination of plaintiff could not be taken. The advocate of defendants used to attend this Court on every Tuesday and Wednesday, but the case was kept on Friday. Therefore, again the cross-examination of plaintiff could not be taken. Resultantly, no cross order was passed. If the permission to take cross-examination will not be granted, then the defendants will suffer from irreparable loss, hence, he prayed to allow the application.

4] The plaintiff by say overleaf the application opposed on the grounds that he denied the application and its contents and requested to impose costs, if the application is allowed. Hence, he prayed to reject the application.

5] I have gone through the record and it shows that the suit is instituted on 03.10.2017 and became old more than 4 years. The suit is pertinent to declaration, injunction, partition and

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separate possession. Wherein, the plaintiff filed her evidence on affidavit on 16.08.2019 and her further examination in chief is recorded on 01.11.2019. On that day, the defendants and their advocate were absent. Resultantly, no cross order was passed. Then after, the plaintiff on 20.12.2019, the plaintiff closed her evidence vide pursis (Exh.53).

6] The present application is filed on 06.03.2020 after the period of near about 4 months. It shows deliberate negligence on the part of defendants about not attending the Court proceeding and not co-operating to the Court for expedite disposal of the case. Even, the defendants did not adduce their evidence. The days for attending the Court by the advocates as per their convenience is nowhere prescribed by law, therefore, on which day, the matter was posted were the days for hearing and it was the responsibility of the parties to attend the matter as and when fixed by the Court. Therefore, I do not find substance in the contention of defendants that the matter was kept on Friday, therefore, the advocate of defendants was unable to attend the Court.

7] The roznama of the case clearly demonstrated that the defendants are continuously absent. It shows that the defendants are never diligent about the Court proceeding and therefore, only on the part of defendants, the trial of the case is protracted. The delay is caused only on the part of defendants. However, it is well settled principle of law that the opportunity of hearing is required to be given in the interest of natural justice. However, it does not

mean that the defaulter can seek all remedies available in law as per his choice. I find that opportunity of cross-examination is required to be given to the defendants by recalling the plaintiff, but costs is required to be imposed against the defendants which would be the lesson to the defendants about their negligence towards the case. Therefore, in my considered view permission to take cross-examination is required to be given subject to payment of delaying costs of Rs. 1000/- payable to the plaintiff and bhatta of plaintiff. As such, the application is deserves to be allowed subject to payment of costs. Hence, I pass the following order.

ORDER

- 1) The application (Exh.54) is hereby allowed subject to payment of delaying costs of Rs.1000/- (One Thousand Only) payable to the plaintiff.
- 2) The payment of Costs is condition precedent and it shall pay on or before next date.
- 3) After payment of costs, the plaintiff/witness Jyoti Omprakash Tayde is directed to remain present for cross-examination.

(Order is dictated and pronounced in open Court.)

Sd/-

Place : Tiosa
Dated: 26-10-2021

(Liladhar D. Korde)
Civil Judge (Junior Division),
Tiosa