

Order passed below Exh. 91 in R.C.S. No. 308/2001
Gorakhnath Vs M.C. Gangapur & another

01. The defendant No. 1 filed this application for setting aside “No Cross-Examination Order”. The defendant No. 1 submits that it is an autonomous body and also filed written statement below Exh. 39 on 09.04.2002. In the meantime, there was no progress and as there was material changes in the administration of defendant No. 1, it could not keep touch with the matter and further due to want of information and hence No Cross-Examination Order came to be passed and now it is for further evidence. It is also submitted that the defendant No. 1 has legal interest and to adjudicate real controversy and for adjudication of the question on merit, the defendant No. 1 has to participate in further proceeding of the suit and for that purpose for ascertaining the truth, the plaintiff is required to be cross-examined by this defendant. The act of the defendant No. 1 is accidental and not intentional. Hence prayed to set aside No Cross-Examination Order dated 09.03.2016. It is submitted that no prejudice will be caused to the plaintiff if application is allowed.

02. The plaintiff filed his say and submitted that suit is of the year 2001. The chief examination of the plaintiff was filed on 10.04.2013. Further chief was completed on 05.12.2015 and on the same day as per request of the defendant, matter was adjourned. Thereafter time to time matter was adjourned for cross-examination and sufficient time was given and on 09.03.2016 No Cross-Examination Order was passed against the defendant No. 1. The

defendant No. 2 also completed cross-examination and the plaintiff also filed evidence close pursis and thereafter suit posted for the defendant's evidence and without adducing evidence, the defendant No. 1 filed this present application only to prolong the matter. Hence the plaintiff prayed to reject the application.

03. Heard learned Advocate Shri. V. S. Manorkar for the defendant No. 1 and learned Advocate Shri. B. R. Rajput for the plaintiff at length.

04. On perusal of the record, it appears that the plaintiff has filed it's evidence affidavit below Exh. 84 on 10.04.2013. It appears that thereafter there was no substantial progress until 05.12.2015 when further chief examination was completed. It further appears that on request of the defendant's Advocate matter was adjourned for cross-examination. Thereafter on 09.03.2016 the defendant No. 1 and it's Advocate remain absent, hence No Cross-Examination Order came to be passed. Thereafter the defendant No. 2 completed cross-examination and the plaintiff also closed his evidence an suit is for evidence of the defendants.

05. Since from 05.12.2015 right to cross-examine the plaintiff occurred to the defendant No. 1. It is a case of the defendant No. 1 that it has no information about dates and there was substantial change of management in it's body. If it is so, the record dated 05.12.2015 below Exh. 84 speaks otherwise. It shows that on the defendant's request, cross-examination was adjourned.

So one cannot say that the defendant No. 1 has no knowledge about the suit being kept for cross-examination. No doubt the defendant No. 1 is an autonomous body, but that does not mean that it can take benefit of it for delaying the suit.

06. It is a matter of record that suit is of the year 2001 and as per the directions of the Hon'ble Bombay High Court, the proceeding which are pending for more than 5 and 10 years old are required to be disposed off expeditiously. Since 05.12.2015 the defendant No. 1 failed to cross-examine the plaintiff and present application is filed after a period of 14 months. Therefore there is considerable delay on the part of the defendant No. 1. If really the defendant was interested to proceed with the suit and to cross-examine the plaintiff, the defendant ought to have made enquiry in the Court about the same. However, considering the nature of suit and that the plaintiff is seeking recovery of vacant possession of Shop/Gala from the defendant No. 1 and also seeking direction against the defendant No. 1 for issuance of allotment letter in his name in respect of suit shop, therefore final and last opportunity is required to be granted to the defendant No. 1 to contest the suit. It is made clear that suit being more than 15 years old no further time will be granted to the defendant No. 1 on any reason whatsoever for cross-examination of the plaintiff. Due to the act of the defendant No. 1, there is delay in proceeding with the suit. Hence the defendant No. 1 should compensate the plaintiff in terms of cost. Accordingly, I pass the following order.

ORDER

- 1) The application is allowed.
- 2) The No Cross-Examination Order passed against the defendant No. 1 dated 09.03.2016 below Exh. 84 is hereby set aside.
- 3) The defendant No. 1 pay cost of Rs. 3,000/- to the plaintiff.
- 4) It is made clear that if the defendant No. 1 failed to pay cost on or before next date, then no further time will be granted to the defendant No. 1 for payment of cost and if the defendant No. 1 failed to pay cost, the order dated 09.03.2016 will automatically revive.

Date :- 17th March, 2017.

Sd/-
(Ajay A. Bhatewara)
Civil Judge (Junior Division),
Gangapur

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 the Stenographer : Akshay R. Kulkarni.
Court : Civil Judge (J.D.), Gangapur.
Order Date : 17.03.2017.
Order signed by the : 21.03.2017.
Presiding Officer on
Order uploaded on : 21.03.2017.