

**ORDER BELOW EXH. 112 IN R.C.S.NO.58/2011**

1] By this application, defendants No. 2 to 11 pray to set-aside and review the order passed below application (Exh.109).

2] According to them, this Court has rejected application (Exh.109) for depositing costs because their Advocate was absent in the morning session. The matter relates to immovable property and rights of parties are involved therein. It is, therefore, in the interest of justice to set aside and review order passed below application (Exh.109) and allow those defendants to argue the same.

3] Learned Advocate for plaintiffs filed say contending that the contents of this application are totally false. It is filed to prolong the matter. Those defendants are filing various applications to harass plaintiffs. The matter is quite old and, therefore, present application is liable to be rejected.

4] Following points arise for my determination and my findings thereon are as under -

**POINTS**

**FINDINGS**

- |    |                                     |                       |
|----|-------------------------------------|-----------------------|
| 1] | Is this application worth allowed ? | ..In the negative.    |
| 2] | What order ?                        | ..As per final order. |

**REASONS**

5] Heard both sides. Perused record.

**POINTS NO. 1 AND 2**

6] This is a suit for partition and separate possession. Before going into merits of this application, it is necessary to mention few facts of the matter. On 10/08/2016, plaintiff No. 6 filed his evidence affidavit (Exh.78) and since then, the matter was pending for his cross-examination. On 26/09/2016, vide order below application (Exh.102), time was given to those defendants to cross examine plaintiff No.6. The matter being quite old, on 19/10/2016, vide order below application (Exh.103), last chance was given. On 16/11/2016, vide order below application (Exh.104), one more opportunity was given to them. On 23/11/2016, application (Exh.105) filed by those defendants seeking time, stood rejected and "No cross" order came to be passed against them. Present defendants filed application (Exh.108) to set aside this order. After hearing both sides, application (Exh.108) was allowed on 22/03/2017 on imposing costs of Rs.200/- each to be paid to plaintiffs on or before next date of hearing. It was specifically directed that failure of defendants to pay costs and to proceed with the matter on next date, would automatically vacate the said order. Defendants were also directed to proceed with the matter on the next date without fail.

7] In spite of this, those defendants neither paid costs nor proceeded with the matter. On 19/04/2017, defendants No. 3 and 5 only were present. They were ready to pay their costs but declined to proceed with the matter as their Advocate was absent. No reason whatsoever was given for absence of learned Advocate for defendants. Therefore, order dated 22/03/2017 passed below application (Exh.108) automatically stood vacated and "No cross"

order passed on 23/11/2016 stood confirmed. Specific order to that effect was passed below Exh.1 on 19/04/2017. As plaintiffs had already closed their evidence, last chance was given to defendants to lead their evidence. The matter being quite old, it was also directed that on failure of defendants to lead evidence, their evidence would be treated as closed.

8] However, present defendants did not lead evidence. Instead, they filed application (Exh.109) seeking permission to pay costs, as directed by order passed below application (Exh.108). The only ground put forth by them was that they were not aware of this order and, therefore, could not pay the costs, as directed. However, it was totally false. As stated above, those defendants were present on 22/03/2017, when order below application (Exh.108) was passed. Even on 19/04/2017, defendants No. 3 and 5 were present. As such, it was not acceptable that those defendants had no knowledge of order dated 22/03/2017. Even on 21/06/2017, when application (Exh.109) was decided, those defendants were not ready to proceed with the matter, as their Advocate was absent due to his personal difficulty. By any stretch of imagination, it was not sufficient reason to prolong the matter, more particularly, in the background of specific direction to pay costs and to proceed with the matter. Present defendants were unnecessarily prolonging the matter. This caused harassment to plaintiffs also. Considering those facts so also old pendency of the matter, application (Exh. 109) stood rejected.

9] Apart from the facts stated above, it will have to be seen if there is scope to review the order under challenge. An order can be reviewed on any of the following grounds -

- 1] From discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the party seeking review or could not produce it at the time when the order was passed,
- 2] Some mistake or error apparent on the face of record and
- 3] Any other sufficient reason.

10] Admittedly, present application does not disclose any of the above grounds for reviewing order passed below application (Exh.109). Even during arguments, learned Advocate for those defendants could not point out as to on which ground, review of earlier order was sought. As stated above, more than sufficient opportunity is already given to those defendants. However, they unnecessarily prolonged the matter. There is substance in the submission of learned Advocate for plaintiffs that present application is one more attempt to prolong the matter. As such, I find no good ground to review the order under challenge. There is no merit in this application. It is liable to be rejected. Hence, I answer point No. 1 in the negative and in answer to point No. 2, I pass the following order.

**ORDER**

- 1] Application (Exh. 112) stands rejected.
- 2] Costs in cause.

Sd/-

(Anil B. Kulkarni )

Civil Judge (J.D.) Shirur Kasar.

Date:- 03/01/2018.