

MHBI160013262014



R.C.S.No. 521/2014

Sheshrao Vs. Tukaram

ORDER BELOW EXH. NO.45

Perused application and say. Heard both the sides. Defendants prayed for setting aside the no cross order passed to the P.W.1 on dated 25.10.2018. The learned advocate for the plaintiffs filed their say on the application itself and strongly objected to allow the application.

2. Defendants contended that, on 25-10-2018 the no cross order was passed to the P.W.1. Defendant was ill and other defendants are government servant hence, they were not able to remain present before the Court and cross-examine the witness. Afterwards defendants has cross-examined to the P.W.2. The present matter relates to the immovable property hence, defendants wants to cross-examine the P.W.1. Hence, defendants prayed for allowing the application by setting aside the no cross order passed.

3. Per contra, the learned advocate for the plaintiffs submitted that the several opportunities was given to the cross-examine the defendants but defendants has not cross-examined the P.W.1 and no cross order was passed on 25.10.2018. The reasons stated in the application is not proper. Hence, prayed for rejection of application.

4. Plaintiffs has filed the present suit for possession and mesne profits in respect of the suit property. On perusal of the suit and application it seems that important civil rights of the defendants are involved. It is necessary to decide every suit on merit rather than the technicalities. Defendants prayed

for to set aside the no cross order passed. It is admitted fact that, on 25.10.2018 the no cross order was passed and afterwards defendants has cross-examined the P.W.2. on 12.09.2022. Defendants has not filed the documentary evidence of alleged illness as pleaded in the application. On perusal of record it seems that, defendants have opportunity to file the present application much earlier but the defendants not filed the present application with due diligent. However, it is necessary that, every suit needs to be decided on merit. Hence, a chance needs to be given to the defendants to cross-examine the P.W.1. Hence, considering the reason stated in the application it needs to be allowed. Alongwith this, while allowing the present application the heavy costs for the delay needs to be imposed. Hence, I pass the following order:

ORDER

1. Application is allowed subject to depositing the cost of Rs. 1200/-.
2. Cost be given to the plaintiffs on or before next date.
3. Parties to take note accordingly.

Date : 24/11/2022

(A.T.Mangire)
Civil Judge Jr. Division,
Shirur kasar.

"I affirm that the contents of this PDF file are word to word as per original Judgment/order".

Sd/-
[P.B. Kusumkar]
Stenographer Grade-3

Dictated on : 24/11/2022
Transcribed on : 24/11/2022
Checked & signed on : 24/11/2022