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IN THE COURT OF JUDGE, CO-OPERATIVE COURT, JALGAON.
(BEFORE SMT.R.S.SHAIKH,JUDGE)

Dispute No.J/169/2011.

DISPUTANT : Mahavir Nagari Sahakari Patpedhi,Chopda,
Dist.Jalgaon.

V/s.

OPPONENT : Ram Sundarlal Gujrathi,

:ORDER BELOW EXH.136:
(Passed on :16.10.2018)

1. The opponent No.1 has filed the present application for setting aside the 'no evidence' order passed against him on 31.08.2018 below Exh.1.

2. The opponent No.1 in the present application contends that he was appeared in the dispute and contesting the dispute on merits by filing written statement. In the dispute, the opponent No.1 has also conducted the cross-examination of disputant witness. The opponent No.1 in the present application contends that he is heart patient and on 14.05.2018 he was hospitalized in Ruby Hall Clinic, Pune for angioplasty. Due to his angioplasty, the opponent No.1 was required to take medical treatment and therefore he could not remain present in court and also could not given necessary information to the advocate and would not filed the evidence affidavit. The opponent No.1 contends that if the opportunity to adduce evidence is granted to him, then the disputant society could not face any harm and loss and on the contrary the dispute of the disputant society

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would be decided on merits. The opponent No.1 alongwith present application has filed the documents regarding his angioplasty and discharge certificate. Therefore, the opponent No.1 has filed the present application.

3. The disputant society has filed its say on the backside of the application thereby strongly objected the application on the ground that the opponent No.1 deliberately remained absent in the matter and no sufficient reasons has been mentioned in the application for setting-aside the 'no evidence' order passed against him. Thus, the disputant society prayed for rejection of the application with heavy cost of Rs.10,000/- from opponent No.1.

4. Heard the Ld.counsels for both the sides. Perused the contents made in the application and the say filed by disputant society as well as also perused the record and proceeding of present dispute. From the record, it appears that the disputant society has closed its evidence by filing pursis below **Exh.113 on 07.12.2017** and since then the matter was pending for evidence of opponents. However, as the opponents failed to adduce their evidence. Therefore, this court on 31.08.2018 passed 'no evidence' order against opponents. The opponent No.1 in the present application contends that he came to be hospitalized in Ruby Hall Clinic, Pune for his angioplasty treatment on 14.05.2018 and thereafter he was require to take medical treatment continuously and therefore he could not remain present in the court for adducing evidence. The opponent No.1 alongwith list **Exh.137** filed the documents

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regarding medical treatment. From the record of the dispute, it appears that the opponent No.1 has contested the dispute by filing his written statement on record. From the record, it also appears that the opponent No.1 counsel has conducted the cross-examination of the witness of disputant society. The disputant society objected the application of opponent No.1 only on the ground that the opponent No.1 is deliberately prolonging the hearing of the present dispute. However, from the record, it appears that the opponent No.1 contesting the dispute on merits at several stages of the dispute and if the period after the evidence closed by the disputant society is seen, then it appears that the opponent No.1 was not keeping good health and therefore he was unable to attend the court to adduce the evidence in the matter. The reasons given by the opponent No.1 in the application is supported with the documents filed alongwith list **Exh.137**. Therefore, even if the application of opponent No.1 is allowed and the opportunity is granted to opponent No.1 to adduce evidence, then no loss or prejudice would be caused to the disputant society and in fact the dispute of the disputant society would be heard and decided on merits. Hence, in view of the above stated facts and circumstances of the case, I proceed to pass the following order.

: ORDER :

1. The application below **Exh.136** is allowed.
2. The 'no evidence' order passed against opponent No.1 on 31.08.2018 below Exh.1 is hereby set-aside subject to payment of cost of Rs.300/- to the disputant society.

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3. Order pronounced in open court.

DATED : 16/10/2018.

**(Smt.R.S.Shaikh)
Judge,
Co-operative Court,Jalgaon.**