

MHKO070013902014



REGULAR CIVIL SUIT NO. 237/ 2014
(Kalgonda Patil Vs. Pramod Khanjire & Anr.)
ORDER BELOW EXH. NO. 38

Plaintiffs filed affidavit of his first witness at Exh. 36. Defendants failed to cross-examine him, therefore no cross order was passed on 09.09.2019. On the same day, this application is moved by defendants for setting aside said no-cross order. Say of plaintiff is overleaf the application.

02. According to defendants, they and their advocate were present throughout the day and were ready for cross-examination of witness of plaintiff, but when the court started hearing criminal matters, they thought that the hearing of suit is adjourned, and therefore left the court premises. However, when they come to know that no-cross order is passed against them, they immediately moved this application, and that too on the same day. *Per contra*, plaintiff opposed this application on the ground that application is not on affidavit and the grounds mentioned in it are flimsy.

03. Heard learned Advocate Shri U.V.Kulkarni for plaintiff and learned Advocate Shri G.K.Ambekar for defendants. Also gone through the record and proceeding, more particularly roznama of the proceeding. It is seen that cross-examination of P.W.No. 1 Kalgonda had commenced on 13.06.2019, some important questions were asked to him by defendants, and later on the matter was adjourned for further cross-examination. Thereafter, the matter was adjourned for 3 times as per requests of plaintiffs, and was fixed on 09.09.2019 for further cross-examination. Roznama dated 09.09.2019 goes to show that learned Advocate Shri G.K.Ambekar for defendant was present on that day, but he remained absent when the matter was

called on for hearing. Considering this important aspect, I am of the view that contentions of defendants are true and correct. In the light thereof as well as the questions involved in the matter, I am also of the view that for fair decision on merits, which will be in larger interest of both the sides, application deserves to be allowed.

04. However, another important aspect needs to be considered at this juncture. It transpire from record that said P.W.No. 1 Kalgonda is the sole plaintiff himself, he had expired and now his L.Rs. have continued the suit. Now eventhough the application is allowed, cross-examination of said witnesses will not be practically possible. However, if merely on this ground, if the application is rejected, it may result that since opportunity of rebuttal of evidence of said witness was not given, defendants will face unnecessary consequences. Therefore, if the application is rejected, on this mere technicality, prejudice will be caused to defendants, more particularly on the basis of fact that plaintiff had sought adjournments on consecutive dates for the cross-examination of said witness.

05. As a result of all the abovesaid, I am of the view that the application deserves to be allowed. Accordingly, following order.

ORDER

1. Application is allowed.
2. Cost to be in the cause.

Dt. 18.04.2022
Jaysingpur

(**Anand D. Karbhajan**)
Jt. Civil Judge (Junior Division),
Jaysingpur, Tq. Shirol, Dist. Kolhapur.