



**Order below Exh.36 in R.C.S. No.101/2011.**

1] Defendants have filed present application for setting aside the 'no cross' order passed below Exh.16 on 09/01/2019.

2] It is submitted by defendants that on 09/01/2019 the Advocate of defendants are busy in Court work at Kolhapur. The said fact was told by defendants to the Court. Thereafter, their Advocate reached in the Court at about 4.00 p.m. for cross-examination of plaintiff's witness. At that time the plaintiff's witness was not present in the Court. Therefore, the Court adjourned the matter. Thereafter, today they have got knowledge that the no cross order was passed against them after perusal of proceeding of present suit. Hence, they prayed for setting aside the no cross order passed on 09/01/2019.

3] The plaintiffs have resisted the present application by filing their say below the same application. They submitted that the contents of said application are false. The evidence of plaintiff's witness has been filed on 01/07/2014. However, since then, defendants avoided to take cross-examination of plaintiff's witness. Therefore, on last date at about 4.20 p.m. the Court passed no cross order. Defendants intentionally avoided to take cross-examination. Hence, they prayed for rejection of present application.

4] Heard both the sides.

5] Perused the application, the say and record of the case. This application is filed for setting aside the no cross order passed

by my learned predecessor on 09/01/2019. There is no delay in applying for setting aside. So, it is desirable to keep liberal approach at the time of deciding such type of applications. Further, for the adjudication of suit on merit it is necessary to give an opportunity to defendants of cross-examination of PW1. At the same time, the dilatory conduct of defendants needs to be considered at the time of imposing costs. Thus, considering the interest of justice and conduct of defendants, following order is passed.

**ORDER**

The application is allowed and 'no cross' order dated 09/01/2019 passed against defendants is set aside subject to cost of Rs.1500/- (Rs. One thousand Five Hundred Only) to be paid to plaintiffs.

Sd/-

(V. H. Khedkar)  
Jt. C.J.J.D. Kagal.

Place:-Kagal.  
Date:-17/06/2019.