

R. C. S. No. 5/2015.
Balu (D.) L.R.'s Vs. Shankar (D.) L.R.'s & Ors.
MHKO150000512015.

ORDER BELOW EXH- 122.

Perused application and say. Heard counsels for both sides. They submitted as per contents of their application and say. Both counsels are agree with the stage of proceeding.

2. This application filed for setting aside no cross order. It is contention of defendant no.1/C that, after filing his W. S. plaintiff has adduced further evidence of witness Rajendra. Previously, plaintiff had filed affidavit of witness Rajendra at Exh.108. He has filed this application for setting aside no cross order passed against him vide Exh.108. He having sanguine hope of success and no prejudice would be caused to plaintiffs, if his application allowed. Thus, prayed to allow the same.

3. Defendant opposed the same and contended that, on 25.07.2024 no cross order was passed against defendant no.1, thereafter, he has filed an application for setting aside no W. S. order. Thereafter, issues has been framed and plaintiffs have adduced their additional evidence of witness. Defendant intentionally to prolong the case, adjourn on various grounds. Plaintiff's witness to attend court proceeding on each date came from Palghar, Mumbai. Thus, prayed to reject the application and if court incline to allow this application, prayed to impose heavy cost.

4. On perusing record it shows that, no W. S. order was passed against this defendant has been set asided on 01.04.2025. Before that, due to failure of this defendant to cross examine plaintiff witness on

05.07.2024 no cross order was passed against him. The overall conduct of this defendant shows that, he is not willing to proceed with the matter delectly.

5. Except this defendant, no one contest the proceeding. This is suit for fixation of boundaries. Considering valuable rights of both parties, opportunity deserved to be granted to him. No prejudice would be caused to the plaintiff, if application allowed. Per contra if it rejected it will amount declined of natural right to defence and it against to the principle of natural justice. Thus, in result of above discussion in the interest of justice, I pass following order,

ORDER

1. Application is allowed, subject to cost of Rs. 1,000/- paid to plaintiffs.
2. Defendant is directed to comply order and cross-examine plaintiff's witness on next date without fail.
3. Plaintiffs are directed to remain present their witness for cross-examination on next date without fail.
4. Parties to take note and proceed further.

Place- Ajara.
Date- 28.10.2025.

(R. P. Thore)
J.O.Code No.MH02897
Civil Judge, Junior Division,
Ajara.