


|   |   |
|---|---|
| <p>MHKO160002782023</p>  | <p><u>Order below Exh.63 in</u><br/><u>R.C.S.NO.38/2023</u></p> |
|---|---|

1. Present application is filed by defendant for setting-aside no cross order passed below Exh.19 dated 21/10/2024. He submitted that due to ill health of his learned advocate, he failed to conduct cross-examination. The suit needs to be decided on merit, unless, he will suffer irreparable loss and prayed to allow the application. He relied upon judgment of *Hon'ble Supreme Court in the case of Ayubkhan Pathan Vs. State of Maharashtra AIR 2013 SC 58.*

2. Plaintiff has filed say to the application at Exh.64 and submitted that the affidavit of witness was filed on 21/06/2023. Thereafter, in spite of many opportunities, defendant failed to cross-examine witness. The plaintiff has filed his affidavit of examination in chief at Exh.18 on 21/06/2023. In spite of sufficient opportunity, defendant failed to cross-examine him also. On 21/11/2024, application for setting-aside no cross order passed below plaintiff's affidavit of examination in chief was filed by defendant, however, he intentionally in order to prolong the proceeding did not file application for setting-aside no cross order passed below Exh.19. Since filing of said affidavit, more than twenty eight dates has been lapsed. Thus, the defendant has caused huge delay in the proceeding. Lastly, prayed to reject the application.

3. Heard both the learned advocates and perused all documents on record.

4. It appears that the plaintiff filed his affidavit of examination-in-chief at Exhibit 18 and the affidavit of witness Sandip Pandit at Exhibit 19 on 21/06/2023. However, the plaintiff later filed an additional affidavit of examination-in-chief on 25/09/2024, which was read and recorded on the same date. The affidavit of witness Sandip Pandit was read and recorded on 21/10/2024. Notably, no cross-examination order was passed on 21/10/2024 for either affidavit. This indicates that although the witness's affidavit was filed on 21/06/2023, it was not read and recorded until 21/10/2024. Furthermore, the Roznama does not reflect the presence of the said witness before 21/10/2024. Therefore, the plaintiff's claim that twenty-eight dates have lapsed since the filing of the affidavit holds no merit.

5. It further appears that on 21/11/2024, an application was filed to set aside the order passed below Exhibit 58, i.e., the additional affidavit of examination-in-chief of the plaintiff. This application was allowed on 02/01/2025, subject to a cost of ₹500. It was expected of the defendants to take timely steps to set aside both the "no cross" orders without undue delay. However, the present application was filed only after the cross-examination of the plaintiff had been completed. While there is a delay in filing the application, the delay does not appear to be unreasonable. Moreover, as held by the Hon'ble Supreme Court in Ayubkhan Pathan v. State of Maharashtra, AIR 2013 SC 58, the right to cross-examination is a fundamental component of the principles of natural justice. Therefore, in the interest of justice, it would be appropriate to allow the defendants to cross-examine the plaintiff's witness. Accordingly, the present application is allowed, subject to costs of ₹1,000. Accordingly I pass following order;

**ORDER**

1. Application Exh.63 is hereby allowed.
2. No cross order passed below Exh.19 dated 21/10/2024 is hereby set-aside subject to cost of Rs.1,000/- to be paid to the plaintiff till next date.

**Shahuwadi**  
**Date : 18/07/2025**

**( P. B. Pawar )**  
**Civil Judge, Jr. Division,**  
**Malkapur-Shahuwadi.**

