



Order Below Exh.17 In CRI.M.A. No. 33/2023
(Farida Mulla and Anr. v. Abdulgani Mulla and Ors.)

Non-applicants have filed present application for setting aside 'evidence close' order passed against them.

02. Non-applicants have contended that, due to operation of eyes of non-applicant No.1, they could not take effective steps to adduce their evidence. Hence, evidence of non-applicants came to be closed as per order passed below Exh.1 on 20.08.2024. Due to above mentioned justifiable and unavoidable circumstances, non-applicants could not adduce their evidence in the present matter. Considering nature of the main application, their evidence is necessary for just decision of the matter. Hence, they may be permitted to adduce their evidence. They lastly prayed that, the application may be allowed.

03. Applicants have strongly resisted present application by filing their say on overleaf of present application. They contended that, non-applicants have not filed on record documentary proof in support of contentions in present application. The application devoid of merits. Hence, they prayed that, the application may be rejected with cost. They alternatively contended that, if the Court comes to the conclusion to allow present application, cost may be imposed on non-applicants.

04. Heard both sides, at length. On perusal of record and proceeding it appears that, applicants have filed main application under Order IX Rule 9 of the Code of Civil Procedure for restoration of P.W.D.V.A. No.07/2021. It shows that, in spite of ample opportunities being given, non-applicants failed to adduce their evidence in the present

matter. Hence, as per order passed below Exh.1 on 20.08.2024, evidence of non-applicants came to be closed. However, in view of reasons mentioned in the application and submissions of both learned advocates as well as considering nature of the dispute, it would be just and proper to give opportunity to non-applicants to adduce their evidence. Non-applicants have filed this application after considerable lapse of time. However, the delay caused by non-applicants can be compensated by imposing cost upon them. Considering the delay caused, it is just and proper to impose cost of Rs.500/- on non-applicants, which shall be payable to applicants. Resultantly, I pass following order :-

:: ORDER ::

1. Application (Exh.17) is hereby allowed subject to costs of Rs. 500/- (Rupees Five Hundred Only) payable to applicants.
2. Payment of cost shall be condition precedent for setting aside 'evidence close' order passed against non-applicants.
3. Accordingly, application (Exh.17) is disposed of.

(Dictated and pronounced in the Open Court).

Date:- 08.01.2025
Kurundwad.

(Balasaheb S. Gaikwad)
Judicial Magistrate, First Class,
Kurundwad.