

Order below Exh.40

Instant application filed by the defendant no.2 Saikh Mubshiroddin for setting aside no-cross examination order passed against him on 09/01/2023 and 05/07/2023 and to recall the witness for conducting for cross-examination. According to him, suit was proceeded without his written-statement and thus no cross-examination order was passed against him. It is contended by him that, he has filed his written-statement below **Exh.38** and thus wish to cross-examine both witnesses. Hence, prayed to allow the application.

2. Plaintiff has objected the application by filing his say overleaf. According to him, despite knowledge of present suit defendant no.2 has purposefully avoided to file his written-statement so that it shall get prolonged. Hence, prayed to reject the application.

3. Perused application and say. Heard the learned Advocate for both sides. It appears from the roznama that, no-cross examination order came to be passed in respect of PW1 below Exh.23 on 09/01/2023. So, also in respect of PW2 below Exh.34 on 05/07/2023. Record shows that, defendant no.2 has filed his written-statement on 09/10/2023. Thereafter, plaintiff has not laid any evidence. Present suit has proceeded without written-statement of DW1. It appears that, defendant no.2 is the only contesting party to this suit.

4. PW1- Balaji is plaintiff himself and PW2 Vasant Kendre is the Officer working at Sub-registrar Office, Udgir. This is the suit for declaration of ownership and perpetual injunction. If defendant no.2 is

not given an opportunity to put up his case then there would be prejudice to his right of being heard. It is necessary to settle all dispute before this Court to avoid multiplicity of proceeding. At the same time, plaintiff needs to be compensated because of the delay caused by defendant no.2. Hence, I pass following order.

ORDER

1. Application is allowed subject to Costs of Rs. 500/- to be paid to the plaintiff on or before next date.
2. Plaintiff is directed to remain present for cross-examination on next date.
3. Defendant no.2 is at liberty to call witness no.2 Vasant Laxman Kendre for cross-examination on payment of necessary witness bhata after the cross-examination of PW1 Balaji Gone is over.
4. Defendant no.2 shall conduct cross-examination without seeking any further adjournments.

Date:- 25/06/2024
Place:-Udgir.

(N. J. Chavan)
3Rd Jt. C.J.J.D., Udgir.