



Reg. Civil Suit No. 199 of 2022
Rizwana Patel Vs. Layak Shaikh

ORDER BELOW EXH.26

- 1) The present application is filed by the defendant for setting aside no cross-examination order passed against him.
- 2) In brief it is the contention of the defendant that on last date his advocate had been out of station for his personal work and therefore he could not have remain present on time and conduct cross-examination of the witness of the plaintiff, and thus the impugned order came to be passed against him. He is ready to cross-examine the witness and thus opportunity needs to be given to him to cross-examine the plaintiff. Hence, this application.
- 3) The application is strongly opposed by the plaintiff by filing say overleaf the application itself. It is the contention of the plaintiff that only to protract the proceedings and to give trouble to the plaintiffs, the defendant is playing tactics. They have filed evidence affidavit of the plaintiff on 03.11.2023 and since then the defendant had not taken cross-examination of her. Hence, prayed for rejection of the application by imposing hefty costs.
- 4) Heard learned advocates for both the sides. Perused the record. In the case in hand as is argued by the learned advocate for the plaintiff it appears that the plaintiff has filed her evidence affidavit on record on 03.11.2023. As the defendant and his advocate failed to cross-examine this witness, no cross-examination order was passed against him. It is pertinent to mention here that the impugned order came to be passed

on 18.04.2024 and immediately after some time the learned advocate for the defendant entered the Court and moved this application. Though the application is moved immediately after passing of impugned order, still the affidavit in lieu of examination-in-chief filed by the plaintiff on 03.11.2023 cannot be disregarded.

5) Be that as it may, the reason put forth by the learned advocate for the defendant has to be taken into consideration and which seems to be plausible. The defendant has shown his readiness to cross-examine this witness. In this backdrop, opportunity needs to be given to the defendant to cross-examine the plaintiff. At the same time prejudice and delay caused to the plaintiff needs to be taken care of by imposing nominal costs upon the defendant. Accordingly in the interest of justice following order is passed :

ORDER

- (1) The application (Exh.26) is allowed subject to cost of Rs.200/- (Two Hundred rupees only) payable to the plaintiff on today itself.
- (2) On payment of costs, the defendant is directed to cross-examine the plaintiff on today itself.

Date : 14.06.2024

(Bhalchandra R. Zende)
4th Jt. Civil Judge (J.D.),
Udgir.