

MHLA110004332015

R.C.S. No. 416/2015

Umakant Vs. Lalasaheb and Ors.

Order below application vide Exh.77

Perused contents of the application and say thereon. Heard to both sides. They submitted contents of application and say thereon respectively.

2. Perused the record. By this application, the plaintiff is seeking to set-aside order dated 13.01.2026 discarding his evidence of passed below Exh.1 on the grounds that, he was ill, therefore he remained unable to remain present for his cross-examination. The present application is supported with the plaintiff's affidavit vide Exh.78, whereby he affirms that, he was ill, therefore he remained unable to remain present for his cross-examination. Therefore, the plaintiff lastly seeking to set-aside order of discarding his evidence. The defendant contended that, the application is false. No specific reason and sufficient cause is mentioned in the application. The matter is pending since last 10 years. Therefore, the defendants contended to reject the application.

3. The present suit for specific performance of The Contract Act. Averment in the plaint prima-facie reveal that,

defendant No.1 was agreed to sale the suit property for his legal necessity being karta of his family and the plaintiff was agreed to purchase the suit property with certain terms and conditions as alleged. Accordingly, notarized agreement to sale executed between the parties. It also reveals that, the plaintiff paid entire consideration amount to defendant No.1 and received possession on the day of execution of the agreement to sale. However, defendant No.1 refused for executing the sale-deed in favour of the plaintiff. Lastly, the plaintiff is seeking relief of specific performance of contract, perpetual injunction restraining the defendants from causing obstruction to the plaintiff's possession on the suit property and alternatively, refund of consideration amount. The defendants denied the plaintiff's entire claim and lastly, contended to dismiss the suit. In such circumstances, to avoid the multiplicity of the suit and proceedings and to decided the controversies between the parties finally on merits, it would be just and proper to set-aside the order discarding the plaintiff's evidence.

4. The parties will have an opportunities to lead their evidence as well as cross-examine the witnesses of each others. Therefore, no prejudice would be caused to the defendants, if the said order is set-aside. Undoubtedly, there is delay on the plaintiff's part. However, in the above facts and circumstances, the delay may be compensated with the costs. Hence, in the interest of justice, order dated

13.01.2026 passed below Exh.1, discarding the evidence of the plaintiff Umakant Tukaram Mohite is hereby set-aside, subject to costs of Rs.7,000/- (Rupees Seven Thousand Only) payable by the plaintiff to the defendants.

(R. V. Pande)
Date : 13/02/2026 Civil Judge, Senior Division, Nilanga,
Place: Nilanga District Latur.