



Order below Exh No.109 in R.C.S.No.69/2013
(Hirkanabai Vs. Kalawati)

The present application is moved by plaintiff for setting aside 'No-cross' order passed against her vide Exh. No. 104 dated 28.10.2025.

2. It is contended that the plaintiff is suffering from various ailments due to old age. However, her power of attorney holder is the businessman and the alleged day he was out of town. Therefore, for the want of relevant information her advocate could not cross examine DW-1. In result no cross order came to be passed. He specifically stated that he has not been intentionally avoiding the cross examination. However, in order to decide present suit on merit an opportunity should have to given to him to cross examine the DW-1. Hence, he prayed to allow the application.

3. The defendant No.2 to 5 have filed their say vide Exh. 111 and contended that reason provided for setting aside no cross order is not supported with any medical documents. Moreover, as per the contention of power of attorney holder namely Devanand Garad that, he is agriculturist. Hence, the reason provided for setting aside order are not proper. However, if Court come to the conclusion to allow present application then cost of Rs. 5000/- be imposed on plaintiff.

4. Heard advocate of both the parties. Perused the record.

5. The plaintiff has filed the present suit for partition and separate possession in the year 2013. On the perusal of record it transpires

that the DW-1 has filed evidence affidavit on 01.10.2025 vide Exh No. 104 and no cross order came to be passed on 28.10.2025. However, the present application is filed on 10.12.2025. The reason mentioned in the application is not satisfactory. However, to decide the present suit on merits an opportunity should be to given to the plaintiff. Therefore, considering the nature of suit, one opportunity deserves to be granted to the plaintiff in the interest of justice. Thus, it would be necessary to set aside such an order. However, the casual conduct of the plaintiff can be saddled with costs. Hence, the order:

ORDER

1. The application is allowed subject to a cost of **Rs.700/-** to be paid to the DW-1 on or before the next date.
2. On due compliance, the order of 'No-cross' shall stand set aside.
3. On non-compliance of the said order, the order passed below Exh.104 dated 28.10.2025 shall remain in force.

Date:- 13.03.2026
Ausa.

(Shubhangi H. Nalawade)
3rd Jt. Civil Judge Jr. Dn., AUSA.