

Common Order Below Exh. 177
(Passed on 04/10/2019)

Present application is moved by plaintiff for setting aside the evidence closed order against her passed on dated 19.07.2019. According to her, she had paid requisite court fee, as per amendment made by her. Now she is ready to lead evidence in this matter. So she prayed for setting aside no evidence order passed against her and her evidence may be accepted.

2. On the other hand, learned advocate for defendant no. 2 to 6 resisted the application contending that the matter is old one. This application is not on proper and legal ground. This court legally and properly closed the evidence of plaintiff. Plaintiff only prolonging the matter for harassment of defendants. So they prayed for rejection of this application with heavy costs.

3. Heard both the parties. Perusal of record shows that, the suit is for Partition and separate possession of share of plaintiffs in respect of suit property situated at Mashnerwadi Tq. Chakur Dist Latur. Defendant no. 1 filed his separate W.S. vide exh. 41. Defendant no. 2 to 6 vide exh. 34, defendant

no.7 vide exh. 73 and defendant no.8 vide exh. 84 filed their W.S. Issues were framed vide exh. 107.

4. Perusal of record shows that several amendments were carried out by plaintiffs in plaint and several consequential amendments were carried out by defendant no. 2 to 6 in their W.S. Meanwhile, Learned advocate for plaintiffs withdrawn their V.P. on dated 14.09.2018. Plaintiffs engage another advocate in another RCS no. 84/2010 but did not engage any advocate in this matter. So on dated 16.11.2018 matter kept for closing evidence of plaintiff. On dated 29.11.2018 plaintiff engage another advocate, but failed to lead any evidence. Consequently evidence of plaintiff was closed on dated 14.12.2018. Then plaintiff again engaged another advocate on dated 31.12.2018 vide exh. 159.

5. Lastly on dated 04.01.2019 plaintiff filed amendment application vide exh. 163. Which was allowed on dated 22.01.2019. Amended plaint filed on dated 05.02.2019. Amended W.S. filed by defendant no. 2 to 6 on dated 08.03.2019 vide exh. 171. Then matter kept for framing additional issue. Before framing additional issues, an opportunities given to plaintiff to deposit requisite court fee in view of amendment Exh. 163. But plaintiff failed to deposit requisite court fee.

6. Consequently on dated 26.04.2019 order passed below

exh. 1 regarding deposition of court fee by plaintiffs. Plaintiffs seek several adjournments for deposition of requisite court fees. Lastly on dated 21.06.2019 plaintiff moved application to deposit requisite court fee. But insufficient court fee is paid. The requisite court fee for Rs. 2,60,000/- was Rs. 9,630/- and Plaintiffs only paid Rs. 9,200/-. Plaintiffs were directed to deposit remaining requisite court fee, but on dated 28.06.2019, 05.07.2019, 12.07.2019 and 19.07.2019 no any court fee is paid nor any application is moved. Consequently the evidence of plaintiffs were closed on 19.07.2019.

7. Perusal of record shows that, then on dated 26.07.2019 one stranger person submitted application below exh. 175 for submitting court fee Rs.150/-. Then vide exh. 176 on dated 20.09.2019 ld. Advocate for plaintiff stated that, he sent that person along with court fee and necessary application and prayed for it's acceptance. Accordingly the remaining court fee is accepted. But as no evidence order already passed on dated 19.07.2019, present application is filed by ld. Advocate for plaintiff.

8. Considering the period caused by plaintiffs and their advocate for leading evidence and proceeding with the case the application is liable to be rejected, but only to give proper and fair opportunity to plaintiffs and to hear and decide matter on merit one last chance should be given to plaintiffs. But considering the lapse of time and inconvenience caused to

defendant no. 2 to 6 imposition of costs would meets the ends of justice. Hence, following order.

ORDER

1. Application is allowed subject to costs of Rs.1,000/-
2. No evidence order dated 19.07.2019 be set aside after payment of costs.
3. Plaintiff is directed not to seek further adjournments.

Date : 04.10.2019.

(Y.D. Koinkar)
Jt. C. J.J.D., Chakur