

R.C.S. No. 54/2010
Mashna v/s Shakuntala
CNR No.MHLA150002142010

ORDER BELOW EXH. 142
(Passed on 07/09/2019)

This application is moved by the defendant no. 1 for setting aside no evidence order against her. According to her, she is suffering from viral decease since last one month. Therefore she could not appear for giving evidence. Consequently this court passed evidence closed order on dated 19.07.2019. She is ready to filed her evidence of affidavit. So she prayed for setting aside no evidence order and to give her opportunity to lead evidence.

2. On the contrary Ld. advocate for plaintiff, resisted application contending that inspite of sufficient opportunities, plaintiff failed to lead evidence. Consequently no evidence order passed against defendant no.1. Moreover, defendant no.1 set aside no cross order vide exh. 121 on dated 14.12.2018. which was allowed subject to cost of Rs. 500/-. Thereafter the defendant not present before court for cross examination. But she again and again filed adjournment application. Some applications were allowed, some on imposing costs and some were rejected.

3. Lastly on dated 19.07.2019 no evidence order is passed against defendant no.1. Moreover no any affidavit of evidence or any medical documents is attached with the

application or filed on record. Hence, the application is not tenable. As plaintiff unnecessarily prolonging the matter, so he prayed for rejection of it with imposing heavy costs.

4. Heard both the sides at length. Perused record and documents. The suit is for perpetual injunction. Perusal of record shows that, other RCS no. 82/2009 is also pending between parties. In this case, Plaintiff closed evidence on dated 18.08.2017 vide exh. 99. Then Defendant no.1 amended her W.S. vide exh. 106 and filed her affidavit of examination in chief on record on dated 22.06.2018 vide Exh. 110. Part Cross examination was conducted on dated 03.08.2018 and 14.09.2018.

5. Then defendant no.1 changed her advocate after seeking too much time. Then also various application for seeking time was moved. Then no cross order is passed on dated 16.11.2018. Which was set aside by defendant no.1 vide application below exh. 121. Then defendant no. 1 filed application for dismissal of suit vide exh. 123. Which was rejected on 22.01.2019. Defendant no.1 contended that she preferred appeal before Hon'ble High Court, but no any documents filed on record.

6. Consequently several adjournment applications were rejected and again no cross order is passed. In spite of this several adjournments were moved which was also rejected.

Considering demeanor of defendant no.1, finally on 19.07.2019 evidence of defendant no.1 was closed. Then this application is moved.

7. Considering opportunities given to defendant no 1, for leading evidence and oldness of matter, the application is liable to be rejected. But only giving reasonable opportunity and fair hearing of the matter and the matter is regarding immovable property and rights of the defendant no.1 is involved in it, one last chance should be given to defendant. So to give proper opportunity to defendant no.1 and to decide matter on merit, the application needs to be allowed. But considering delay and wastage of time of court some costs should be imposed. Hence, following order.

ORDER

1. Application is allowed subject to costs of Rs. 2000/- along with remaining costs imposed of adjournment applications if any to be paid to plaintiffs on or before next date.
2. No evidence order dated. 19.07.2019 be set aside after payment of costs.
3. Defendant no.1 is directed not to seek adjournments, failure of which will resulted into forfeiture of her evidence.

Date : 07.09.2019.

(Y.D. Koinkar)
Jt.Civil Judge(Jr.Dn.),
Chakur