

**Order below Exhibit. 49**  
**CNR No. MHLA150003092015**

This application is filed by plaintiffs to set aside no evidence order dated 06.02.2019. As per them, they filed evidence on affidavit on dated 16.08.2018. Before that total costs Rs. 600/- is imposed vide order below exh. 41, 42 and 43. But due to non payment of total costs Rs. 600/-, an application below exh. 46 was rejected and the matter kept for evidence closed order. The father of plaintiff no.2 is suffering from diabetes, high blood pressure and other deceases. Moreover the brother of plaintiff also died due to cancer. Due to which plaintiffs could not able to remain present in court. Consequently no Evidence order is passed on dated 06.02.2019. In this matter the valuable immovable property is involved. Considering above reasons they prayed for setting aside no evidence order passed on dated 06.02.2019 and accepting costs.

2. On the other hand learned advocate for defendants resisted the application on the ground that, on dated 16.08.2018 plaintiff filed evidence on affidavit. Due to continuous absentee of plaintiffs, on dated 10.12.2018 vide exh. 46, 20.10.2018 exh. 42, cost Rs 200/-, on dated 16.07.2018 vide exh. 43 cost Rs. 300, on dated 02.01.2019 vide exh. 45 and 46 Costs Rs. 200/- each, i.e. total Rs. 900/- costs in imposed. Due to non payment of costs and absentee of plaintiffs no evidence order is passed. Moreover, no any sufficient reason and evidence is placed on record, by which it appears that plaintiffs were unable to attend court. Hence they prayed for rejection of this application.

3. Heard both the parties. Perusal of record shows that, issues are framed on dated 02.09.2016. Since then the matter was pending for evidence of plaintiff. Then on 06.10.2016, 08.12.2016 vide exh. 35, 17.01.2017 vide exh. 36, on 21.03.2017 vide exh. 37, on 15.06.2017 vide exh 38, on 11.08.2017 vide exh. 39, time was granted to plaintiff. Then on 18.09.2017 and 02.11.2017 no any adjournment application is moved nor any evidence is filed so the matter kept for evidence closed order.

4. On 01.01.2018 again vide exh. 40 time was granted only upon assurance to file evidence without failed. On 24.01.2018 and 26.02.2018 due to another reasons time was granted. On 26.03.2018 no any adjournment is sought. On 23.04.2018 application below exh. 41 was allowed with cost and intimation. On 20.06.2018 also on exh. 42 cost is imposed with intimation. Consequently on 16.07.2018 application below exh. 43 was rejected with costs. Another application exh.44 dated 26.07.2018 was rejected.

5. Then on 16.08.2018 application for accepting evidence is filed and time for depositing cost is prayed. It was put for say of defendants. On 14.09.2018, 08.10.2018 10.11.2018 neither defendants filed any say nor plaintiff deposited any costs. On 10.12.2018 again plaintiff filed application vide exh. 46 for seeking time to deposit costs. On 02.01.2019 defendants filed say below exh. 45 and 46. Consequently order passed on both the applications i.e. exh 45 and 46. application below exh. 45 was rejected on the ground that since 16.08.2018 till 02.01.2019 plaintiff failed to pay costs so plaintiff is not entitled for benefit of section 148 of CPC. Plaintiff was

directed to pay costs on that day itself and it was also ordered that their evidence will be taken on record after payment of costs. But instead of depositing costs plaintiffs again moved application for seeking time below exh. 46 which was rejected with cost of Rs. 200/- and the matter kept for no evidence order.

6. Then on 22.01.19 and 06.02.2019 plaintiffs neither moved any application nor deposit costs. Consequently on dated 06.02.2019 no evidence order is passed against plaintiffs. Then on 26.02.2019 learned advocate for plaintiffs submitted they they are going to deposit costs and moved application for setting aside no evidence order. Consequently on 20.03.2019 this application is moved. Defendants filed say on it on dated 08.04.2019.

7. After hearing both the parties. No any medical and other documents are filed by plaintiffs on record to show that they were unable to attained court. Considering the time already granted to plaintiffs and looking their behavior and manner of conduction of trial, the application is liable to be rejected with heavy costs. But only to hear the matter on merit and to give fair and reasonable opportunity to plaintiffs the application needs to be allowed. The damage and loss sustained by defendants may be compensated by imposing costs. Hence, following conditional order will meet the ends of justice.

**: Order :**

1. Application is allowed Subject to costs of Rs. 2000/-
2. Plaintiffs are directed to pay previous costs on or before next date.
3. no evidence order dated 06.02.2019 is hereby set aside after payment of costs.
4. Plaintiffs are directed not to seek further adjournments.

Date : 24.04.2019.

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