

Order below Exhibit. 40

This is an application filed by plaintiff for for setting aside no evidence order dated 30.07.2018. As per plaintiff, he was under illness, so he was unable to adduce his evidence. Due to his absenty no evidence order passed on dated 30.07.2018. Thus the matter is fixed for argument. As plaintiff is ready to adduce his evidence, so opportunity should be given to him. On the other hand defendant submitted that present application deliberately and intentionally filed. In spite of several opportunities, plaintiff failed to adduce his evidence. Hence he prayed for rejection of application.

2. Considering the submissions made on behalf of both the parties and on perusal of the records of case, it is seen that the case is old one. Hence the fact of causing delay is well within the knowledge of plaintiff. Moreover, no any medical document is filed on record to explain the critical condition of plaintiff. Moreover, looking to the oldness of matter application liable to be rejected. Even though to adjudicate the case on merits and to give proper opportunity to plaintiff, it will be just and proper to allow the application subject to cost. In the interest of justice one last chance should be given to plaintiff. Hence, following order.

: Order :

1. Application is allowed subject to costs of Rs. 500/- to be paid immediately to defendant.
2. No cross order dated 30.07.2018 is hereby set aside accordingly.
3. Plaintiff is directed to lead evidence by filing affidavit of evidence on record without seeking any further adjournments.

Date : 03.10.2018.

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