

Order below Exhibit. 44

This is an application filed by defendant no. 1 to 3 and 6 to 8 for setting aside no cross order dated 15.06.2018. As per defendants, today their advocate is ready to cross examined plaintiff's witness no.2. According to them, plaintiff filed evidence of affidavit and then closed their evidence. Due to failure to conduct cross examination of P.W.2, no cross order is passed on dated 10.06.2019. Due to wrong mentioning of date in the diary of an advocate for defendants, they could not attend court on that date. So no cross order is passed. Then defendants were out of station so they were unable to remain present in court after passing no cross order. To reveals true facts in case the opportunity should be given to them. As they are ready to conduct cross examination, they prayed for allowing application.

2. On the other hand plaintiff submitted that the affidavit of evidence of P.W. 2 is filed on dated 30.11.2018. then Learned advocate for defendants conducted cross examination of plaintiff. Both the affidavits are filed on same date. Learned advocate for defendants had knowledge of this. Since 19.12.2018 no body appear. Consequently no cross order is passed and evidence is closed on dated 10.06.2019. now the matter is for closing evidence of defendants. In spite of several opportunities, defendant failed to conduct cross examination of their witnesses. No specific and cogent caused is mention. Hence they prayed for rejection of application.

3. 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. The cross examination of plaintiff is completed on 12.03.2019. The affidavit of evidence of

P.W.2 is filed on dated 30.11.2018. Since then no cross is conducted even completion of cross examination of plaintiff on dated 12.03.2019. Consequently no cross order passed on dated 10.06.2019. Then also defendant no. 1 to 8 and their advocates were absent on several dates consequently the matter put for no evidence order. Today before filing of this application, no evidence order is passed against defendant no. 1 to 8.

4. Hence, the fact of filing affidavit of evidence of P.W.2 is well within the knowledge of defendants. Moreover, the fact of causing delay is well within the knowledge of defendant. No any sufficient and cogent reason mentioned in the application. 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 defendant no. 1 to 3 and 6 to 8, it will be just and proper to allow the application subject to cost. In the interest of justice one last chance should be given. Hence, following order.

: Order :

1. Application is allowed subject to costs of Rs. 1,000/- to be paid immediately to plaintiff.
2. Defendant is also directed to pay costs if any on previous adjournment application immediately.
3. No cross order dated 10.06.2019 is hereby set aside after payment of costs.
4. Defendant is directed to conduct cross examination of witness of plaintiff without seeking any adjournment.

Date : 11.07.2019.

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