

ORDER BELOW EXH. 41
(Passed on 25/07/2019)

The present application is moved by the defendant 1 on behalf of all defendants for setting aside no evidence order dated 29.06.2019 passed against them. According to them, due to illness of defendant, they were unable to contact their lawyer. Consequently, due to their absentee, No evidence order is passed against them on dated 29.06.2019. So in the interest of justice, they prayed for setting aside no evidence order against them.

2. On the other hand learned advocate for plaintiff, resisted the application on the ground that inspite of sufficient opportunity defendants failed to lead their evidence. On dated 31.01.2019, the evidence of plaintiff is closed. Then inspite of given seven chances, defendants failed to lead evidence. Moreover no any medical certificate is filed on record. The reason mentioned is not true and correct. Hence they prayed for rejection of this application with heavy costs.

3. Heard learned advocate for both the sides. Perused the record and documents. Present suit is for partition and separate possession. The evidence of plaintiff already over on dated 31.01.2019. Then Defendants given chances till

29.06.2019, but failed to lead evidence. Consequently on dated 29.06.2019 no evidence order is passed against them.

4. Considering the nature of suit and claim of plaintiff and the delay caused by defendants, it appears that defendants unnecessarily prolonging the matter. Hence the application is liable to be rejected. But though there is delay in filing this application and there is no specific reason mentioned, only to give proper opportunity to defendants 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, Hence, following order.

ORDER

1. Application is allowed subject to costs of Rs. 500/- to be to plaintiff.
2. No evidence order dated 29.06.2019 be set aside after payment of costs.

Date : 25.07.2019.

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