

MHND160001982014



**R.C.S. No.68/2014
Leelabai Bhujangrao Deshmukh Vs. Anil
Taterao Deshmukh**

Order Below Exh. 80

This is an application filed by the plaintiff for minimize the amount of cost Rs. 5,000/- which was directed to be paid by the plaintiff to the defendants vide order below Exh. 77 dtd. 05/01/2022 and

2. It is submission of the applicant/plaintiff in the application that, the no cross order is passed against the plaintiff due to illness of the plaintiff. Therefore, the plaintiff has filed the application at Exh.75. The same is allowed subject to payment of cost of Rs. 1,000/-. However, plaintiff again failed to comply the order and conduct the cross examination of the defendant's witness. Therefore, the matter was kept for final argument of the parties. Thereafter, the plaintiff has filed the second application at Exh. 77 for setting aside the no cross examination order and give the opportunity to cross examine the defendant. The said application is allowed subject to payment of cost of Rs. 5,000/- out of which Rs.3,000/- is to be paid to the defendant and 2,000/- is to be paid to the State. Therefore, plaintiffs preferred this application to minimize the amount of cost from Rs. 5,000/- to minimum amount.

3. The defendants opposed the application by filing their say on the back side of the application and submitted, that the direction issued as per order below Exh. 77 was to comply the order before next date and if plaintiff fails then matter would be kept for final argument. Therefore, the Ld. Advocate for the defendant Shri S.U.Tikore submitted to reject the application.

4. Heard Ld. Advocate for defendant. The Ld. Advocate Shri R.S. Deshmukh for the plaintiffs are continuously absent and therefore the matter is proceeded without his argument vide order dtd. 16/07/2024.

5. On perusal of record, it appears that, the matter is more than 10 years old. The suit is for partition and separate possession of suit properties. As per order below Exh.75, the opportunity was given to the plaintiff to conduct the cross examination of defendants. Despite that plaintiff failed to conduct the cross examination by making payment of cost of Rs. 1,000/- only. Thereafter, again the opportunity is given to the plaintiff as per order below Exh.77 but this time also plaintiff failed to comply the direction of the court i.e. to make payment of Rs. 5,000/- before next date. Operative order No. 3 is conditional. If the plaintiff failed to comply this order, then matter would be kept for final argument. The said order is passed by My Ld. Predecessor. The said order is passed on 05/01/2022. Since then 03 years have been completed. Despite that the plaintiff has not complied with the said order and filed the present application for minimizing the amount.

6. Considering the age of the matter and absence of the plaintiff since last more than one year, I am of the view that, as the

conditional order is passed by My Ld. Predecessor which is not challenged by the plaintiff and as per said order failure to comply the direction would result in the keeping the matter for final argument. Therefore, I am of the view that, the plaintiff is not attending the court and has not deposited the amount of Rs.5,000/- for conducting the cross examination. Therefore, it appears that, plaintiff is not willing to conduct the matter. If plaintiff would have shown his willingness to make some payment towards cost, then it would have different things. In this circumstances, I am of the view that, there are no grounds to minimize the amount of cost as plaintiff only prolonging the matter, which reflects from the records of the case. Hence, I pass the following order.

ORDER

- 1) The application at Exh.80 is rejected.
- 2) Cost shall in main cause.

(Dictated and pronounced the open court)

Hadgaon
Date: 17.04.2025

(Amarjeet Bharatrao Jadhav)
Judicial Magistrate, First Class,
Hadgaon Dist Nanded.

CERTIFICATE

I affirm that the contents of this P.D.F file order/judgment are same word for word as per original order.

Name of Stenographer : Anita S.Godam,

Name of court : C.J.J.D.& J.M.F.C., Hadgaon Dist
Nanded.

Order Date : 17.04.2024

Judgment/order signed
by Presiding Officer on : 17.04.2025

Judgment/order
uploaded on : 22.04.2024