

Order passed below Application Exhibit -

(1) Essentially, this is a suit for declaration alongwith consequential relief of Perpetual Injunction.

Staple Facts :-

Initially, only three persons were arrayed as Deft/s. Sangita and Poona (Deft/s 4 and 5) lateron impleaded as Deft/s. Initially, suit was ordered to proceed without WS against Deft/s 1 and 2, lateron said order was set aside. They also placed on record their WS as well as Counter claim, to which, they arrayed Sangita and Poona (Deft/s 4 and 5) as Deft/s to the counter claim. Issues have been framed. Counter claim is proceeding without WS of the Deft/s. Vide Order Dtd 7th February, 2018 passed below Exh.41, No Cross Order was set aside subject to costs however, Deft/s 1 and 2 did not pay.

(2) Now by filing present application, Deft/s 5 and 5 prays to permit them to cross examine the witenss. Main thrust of argument of Mr. Tikore, Adv is that, if permission, as sought is granted, without any delay, Deft/s 4 and 5 are ready to cross examine the witness and no prejudice would be caused to the Opposite Side, if application is allowed.

(3) *Per contra*, Mr. Pandit, Adv.vociferously opposed the appln. Main thrust of her argument is (i) delay (ii) intentional delay (iii) conduct of the Deft/s to protract the *lis*.(iv) non mention of plausible reason (v) adverse affect on their rights (vi) the Deft/s are trying to linger the matter.

(4) No doubt, it is said that law is highly allergic to pro-crastination however, rules of procedure are intended to be a handmaid to the administration of justice. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a

hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.

(5) This is a civil suit pending since the year 2010. If permission, as sought is granted, no prejudice would be caused to the Plaintiff on the contrary, if witness is cross examined, said aspect definitely help the court to arrive at right conclusion. It would help the court as well as both the parties to render the just decision. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. No doubt the litigation like of present needs expeditious and early disposal; still for complete and effective adjudication, opportunity to cross examine the witness needs to be given to the party, who is supposed to suffer thereby. Our laws of procedure are grounded on a principle of natural justice which requires that no one should be condemned unheard and that he should not be precluded from participating in the cause. Hence, in the interest of justice, I pass the following order :-

ORDER

(1) Application is allowed subject to following conditions :-

(i) Witness to remain present before the court on next adjourned date for cross examination.

(ii) Deft/s 4 and 5 to cross examine him. If they fail to cross examine, No Cross order will be passed.

(iii) If witness fail to remain present before the court for cross examination, his affidavit of exam. in chief will be filed.

(iv) No adjournment shall be granted, except the circumstances are beyond the control of the parties.

(Ganesh A. Ghule)
Joint Civil Judge,(Jr.Divn.)
Hadgaon.

Date : 5th October, 2018.

प्रमाणपत्र

मी अशी खात्री देतो की, सदर पी.डी.एफ. फाईलमधील मजकुर मुळ न्यायानिर्णयाप्रमाणे / आदेशाप्रमाणे प्रत्येक शब्द बरोबर आहेत.

लिपिकाचे नाव - श्री. शेवंडकर.

न्यायालयाचे नाव - सह दिवाणी न्यायाधीश क.स्तर व न्यायदंडाधिकारी वर्ग १, हदगांव.

आदेश दिनांक

:०५/१०/१८.

पिठासीन अधिका-यानी स्वाक्षरी केलेली तारीख

:०५/१०/१८.

आदेश/न्यायनिर्णय अपलोड केलेली तारीख

:०५/१०/१८.