

ORDER BELOW APPLICATION VIDE EXH.81 IN R.C.S.No.70/2014
(Ashok Vs. Mukunda Ors.)

1] Defendant has filed present application to set aside No-Cross Order passed against him below Exh.68 and permit Defendant to cross-examine P.W.-1.

2] It is contention of Defendant that, It was mentioned by adv. Shri. Khangare in the first session that, advocate Shri. Lahabar for defendant would be attending the Court to cross-examine plaintiff at 3.00 p.m. , but due to personal difficulty of advocate for defendant he could not reach the court at 3.00 p.m and at 4.00 p.m. when he reach the Court he came to know that no cross order is passed. It is further contended that, some cases for counsel of defendant were listed in District Court at Nagpur. Hence, due to taking care of those cases counsel for defendant could not reach at Saoner till 4.00 p.m. The case of defendant is on merit and they should not suffer for non-availability of the counsel. Hence, prayed to allow the application.

3] Plaintiff has filed say overleaf the application and opposed the same. It is contended that, no details were the counsel was engaged is given in the application. There is no reasonable cause for absence is mentioned in the application. Hence, application be rejected.

4] Heard both the advocates. Considering the rival contention of the parties, the following points arise for my consideration and I have recorded my finding along with reason as below.

No.	POINTS	FINDINGS
1.	Whether no cross order passed against Defendant is liable to set aside ?	Yes.

2. What order ?

As per final order.

:: REASONS ::

5] I have gone through the contentions in the application, say and arguments advanced by the defendants. It is pertinent to note here that, the suit is filed for permanent injunction. The record shows the affidavit examination-in-chief of plaintiff is filed on 13.11.2018. On 19.11.2022 further chief of plaintiff was recorded and on oral request of counsel for defendant cross-examination was adjourn. Later on, on 13.12.2022 counsel for defendant move an adjournment application which was allowed. On 07.01.2023 again the application for adjournment was move it was rejected and accordingly order was passed.

6] It is settled principal of law that, adjournment can not be granted on the ground that, the counsel is present in another court for conducting the matter and accordingly Exh.77 was rejected. It is also settled principal of law that, party should not be suffered due to negligence of the advocate. On perusal of record it can be seen that, some of the burden is casted upon the defendants also. It is pertinent to note here that, the defendants have filed a counter claim in their written statement. Hence, valuable rights of defendant are involved in the suit property. At the same time it is necessary to cross-examine the plaintiff who is the material witness for proper adjudication of matters on merit. Considering the principal of fare trial and principal of natural justice it is necessary to grant an opportunity to cross-examine the sole plaintiff. Plaintiff can be compensated by imposing reasonable cost upon the defendants.

07] Hence, considering all these facts and circumstances and in the interest of justice and principal of natural justice I answer point No.1 in the affirmative and for point no.2 I pass following Order.

:: ORDER ::

1. The application vide Exh.81 is allowed subject to cost of Rs.500/- (Rs. Five Hundred Only) to be given to the plaintiff on or before next date i.e. 29.04.2023.
2. Defendant is directed to comply the order on or before the next date i.e. 29.04.2023 and there after defendant is permitted to take cross examination of P.W.-1 on same date without fail.
3. P.W.-1 Ashok Baliram Charape shall remain present on 29.04.2023 before the Court for cross-examination without fail.
4. Needless to say, failure to comply the order i.e. depositing of amount and conducting the cross-examination on same day, the present order will stand cancelled automatically.
5. Cost in Cause.

[Dictated and pronounced in the open Court.]

Date: 15.04.2023

(R. B. Kulkarni)
2nd Jt. Civil Judge, Jr. Division,
Saoner.