

MHNG130007362009



R.C.S. No. 1400044/2009

Subhash Nagorao Dongre & others.

v.

Nishad Keshav Chavan & others.

ORDER BELOW EXH. 247

Application is filed by defendant no.23 (a) to (e) seeking to set aside the No cross order passed against defendants.

2. It is mentioned in the application that the instant suit is filed by the plaintiff for declaration, possession and permanent injunction. Defendant no.23 died and notice was issued and received to present defendants on 01.02.2022. Thereafter, on 10.06.2022 the present defendants appeared in the suit and filed application for supply of copies of documents. Due to non receipt of those, they could not file their written statement on record. In the absence of the documents, the present defendants could not cross examine the plaintiff and accordingly no cross order came to be passed. Now the present defendants want to cross examine the plaintiff. Application is supported by affidavit. Hence, they prayed to allow the application.

3. Ld Advocate for the Plaintiff has filed a say overleaf of the application. Plaintiff has strongly opposed the application. It is mentioned that the copy of documents was already to supplied to defendant no.23. The present defendants after their appearance have not filed their written statement on record. In absence of their written statement, present

defendants could not cross examine the plaintiff. The present defendants are trying to delay the matter and nothing else. Hence, the plaintiff prayed to reject the application with heavy costs.

4. Heard Ld Advocate for the defendant no.23(a) to (e) and Ld Adv for the Plaintiff. They reiterated the contents of application and reply respectively.

5. Perused the application, say and record. Suit pertains to the year 2009. Suit is filed for declaration, possession and permanent injunction. Defendant no.23 died during the pendency of the suit and notice was issued to present defendants i.e. legal heirs of the defendant no.23 and received by them on 01.02.2022. Thereafter, on 10.06.2022 the present defendants appeared in the suit, but failed to file their written statement. Hence, the exparte order came to be passed vide order below Exh.01 on 26.07.2024.

6. Plaintiff has filed his evidence affidavit at Exh.67 and his further examination was recorded on 23/08/2015. Thereafter, on 24.03.2017, no cross order was came to be passed against all the defendants. Defendant no.23 died on 16.10.2020. His legal heirs to allowed to come on record by passing an order below Exh.208 on 25.08.2023. Thereafter the present defendants appeared but failed to file their written statement. Hence, exparte order came to be passed against them. No separate no cross order is passed against the present defendants, except the no cross order passed on 24.03.2017.

7. The present defendants, by way of this application is seeking for set aside no cross order passed on 24.03.2017. Though they have not filed their written statement on record, they have right to cross examine

the plaintiff. It is settled principle that, the party without filing his written statement has right to cross examine the witness of other side. Considering the valuable civil rights of the parties and in the interest of justice a fair opportunity needs to be given to the present defendants to put up their case by way of cross examination. The conduct of cross examination of the witness shall not cause prejudice to the Plaintiffs, rather it shall facilitate in reaching a final decision. The grievance raised by the Plaintiff and the hardship faced by the witness can be addressed to by saddling of costs on the defendants. Considering the age of suit and duration of appearance of the present defendants and filing of this application, the following amount of cost is required to be imposed. In view of the above discussion, I pass the following order:

ORDER

1. Application is allowed.
2. Order of “No cross examination” passed on 24.03.2017 is hereby set aside.
3. Defendant nos. 23 (a) to (e) are permitted to cross examine the plaintiff subject to payment of costs of Rs. 1000/- to the Plaintiff.

Date: 01/12/2025

Sd/-
(D. C. Vorani)
2nd Jt. Civil Judge Junior Division,
Ramtek.