

MHNS140003932010



**ORDER BELOW EXH.141 IN R.C.S. NO. 62/2010**

Present application is moved by the plaintiff no.3 . He desires to set aside the no evidence order which is passed against him on 18 November 2017. He has submitted that originally the plaintiff no 1 to 3 had a common advocate. Without any prior intimation, the plaintiff no.1 and 2 changed their Advocate. They even went to the extent of moving an application for deletion of the name of plaintiff no.3. Therefore, during the pendency of the suit, the plaintiffs have gone through differences with one another. Eventually, the plaintiff no.3 was compelled to provide a separate advocate for conducting his matter. In the meantime, the adverse orders were passed against the plaintiffs. It is pointed out that this adverse order was passed against him without affording any opportunity to the plaintiff no.3. Now plaintiff no.1 and 2 are not adducing their evidence and the matter is posted for dismissal. The plaintiff no.3 desires to adduce his evidence. Hence, it is prayed that the application be allowed. On the other hand,

the defendant no.4 has raised a very strong objection to the present application through their say below exhibit 144. According to this defendant, the adverse orders were passed against the plaintiff no.1 and 2 on 4<sup>th</sup> October, 2017. This was passed after affording sufficient opportunity. Thereafter, on 8<sup>th</sup> November 2017 an adverse order was passed against the plaintiff no.3. This was a separate independent order. Hence, according to the defendant, plaintiff no.3 cannot claim that such an order was passed in a haste. Moreover, according to this defendant, advocate Shri Purkar had continued for the plaintiff no.3 all throughout. Only plaintiff no.1 and 2 had changed their advocate. On the given dates neither plaintiff no.3 nor his advocate were present. A considerable time has lapsed since then. Present application for setting aside the adverse order is moved only recently. Hence, there is clear negligence on the part of this plaintiff. Delay tactics are being employed. Hence rejection of the application is insisted upon.

I have gone through the application and say. I have heard both sides on this point to a great extent. I have taken into consideration the entire record. it appears that

the plaintiff no.1 and 2 had changed their advocate in the year 2013. No evidence order was passed against plaintiff no.1 and 2 in October 2017. On the given date, no adverse order was passed against plaintiff no.3. Subsequently, in November 2017, an adverse order was passed against the plaintiff no.3 as well. Hence I do not see any haste on the part of Court in passing these orders. The plaintiff himself as well as his old advocate had more than sufficient opportunity to take appropriate steps. Moreover, the change of Advocate on the part of plaintiff no.1 and 2 had happened in the year 2013 itself. Adverse orders were passed against all the plaintiff upon lapse of almost 4 years. Hence, the reason with respect to change in advocate does not sustain.

Further, it has come to my notice that the plaintive no.3 has changed Advocate only recently . It is not clear from his application as to when exactly he learnt about the change in the Advocate on the part of plaintiff no.1 and 2. The contentions in this respect are vague. Additionally, this application for setting aside of the adverse order is moved in June 2023. A period of almost 6 years has lapsed since then. There is no sound reason for

this delay. However, merely with an intent of granting one last opportunity to the plaintiff no.3, I opine that application can be allowed subject to heavy costs. Till date no application is moved by plaintiff no.1 and 2. This in itself cannot refrain the plaintiff no.3 from moving the present application and hence in the interest of justice, I proceed to pass following order –

### **Order**

1. Application is allowed subject to costs of Rs. 6000/- to be paid to the defendant no.4.
2. Plaintiff no. 3 is directed to pay the costs on or before next date failing which matter will proceed for further orders.

Date : 10.01.2024

( K. N. Gowariker )  
Civil Judge Junior Division,  
Dindori