

ORDER BELOW EX. 105**(Passed On 26th February 2020)**

1. This is an application for permission to cross examine plaintiffs witnesses PW1 and PW3 preferred by defendant No. 9, 11, 25 to 27.

2. Perused the application and read the reply. I have heard Mr. V.V Jadhav learned counsel for plaintiffs and Mr. V.U Thakare learned counsel for defendant No. 9, 11, 25 to 27.

3. Mr. Thakare learned counsel for defendant No. 9, 11, 25 to 27 submitted that plaintiffs have filed present suit for declaration, partition, separate possession and permanent injunction. Mr. Thakare submitted that on 05-03-2019 present matter was fixed for chief and cross examination of PW1 and PW3 at the instance of defendant No. 9, 11, 25 to 27 and plaintiffs had filed affidavit of examination in chief of PW1 and PW3 on record on 16-02-2019. Mr. Thakare submitted that he was ready to cross examine PW1 on said date but he was not present as he was not well and thus had failed to appear hence, Court was pleased to pass order of no cross examination of PW1 and PW3. Mr. Thakare submitted that he did not deliberately avoided cross examination of PW1 and PW3. Mr. Thakare submitted in absence of non cross examination of plaintiffs witness PW1

and PW3, defendant No. 9, 11, 25 to 27 would suffer irreparable loss. Mr. Thakare submitted in consonance to his application and prayed to permit defendant No. 9, 11, 25 to 27 to cross examine plaintiffs witnesses PW1 and PW3 and accordingly prayed to allow the instant application.

4. Mr. Jadhav learned counsel for plaintiffs vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Jadhav submitted that defendant No. 9, 11, 25 to 27 are negligent and careless in the instant matter and presently matter is fixed for evidence of plaintiffs but to avoid adducing their evidence deliberately the instant application is filed. Mr. Jadhav submitted that defendant No. 9, 11, 25 to 27 were absent but plaintiffs are diligent and vigilant in contesting the instant matter hence, it proceeded accordingly. Mr. Jadhav submitted this court has already granted sufficient opportunity to defendant No. 9, 11, 25 to 27 to cross examine PW1 and PW3 but defendant No. 9, 11, 25 to 27 failed to cross examine PW1 and PW3 as they and their counsel were absent hence, this court had rightly passed the order and proceeded with instant matter. Mr. Jadhav submitted that defendant No. 9, 11, 25 to 27 are careless and negligent in contesting the suit. Mr. Jadhav submitted that no cross examination order was passed by Court on 05-03-2019 and present application is filed on 25-

09-2019 this itself reveals the vigilance and diligence of defendant No. 9, 11, 25 to 27 in contesting the present matter. Mr. Jadhav submitted that present application is filed on 25-09-2019 that too with ulterior motive just to harass plaintiffs. Mr. Jadhav submitted in consonance to his reply and prayed to outrightly reject it with heavy cost.

5. In case of Dhanraj Lilaram Motwani and another Vs. Rajendra Kumar Dayachand Jain and others AIR 1996 Bombay 3 wherein Hon'ble Bombay High Court has observed that:-

The letter of Order XVII, Rule 1 of the Code of Civil Procedure is more followed in breach than in compliance. Adjournments are sought for and granted by the Courts as a matter of course. Proceedings in the suits are not allowed to move much less conclude by one of the parties interested in delay. The spirit of providing justice expeditiously is shattered and stalled by non-observance of Order XVII, Rule 1 of C.P.C. and as a result thereof, it takes years and years before the proceedings are concluded before the trial Courts. If delay in disposal of cases is to be curbed the wholesome provisions of Order XVII has to be given the meaning it deserves. Interest of justice demands that the proceedings before the Civil Courts are completed as expeditiously as possible and effective work is done in every case on each date of hearing. It was only in this back

ground that Order XVII, Rule 1 has been enacted by amendment in the Code of Civil Procedure Code.

6. On perusal of record it reveals that plaintiffs have filed affidavit of examination in chief of PW1 at Ex. 91, PW2 at Ex. 92 and PW3 at Ex. 93 on 16-02-2019 and further examination of chief of PW1 and PW3 were recorded on 05-03-2019. The cross examination of PW1 and PW3 were deferred since 16-02-2019 and no cross order was passed on 05-03-2019. In the present case issues were framed on 11-01-2019 at Ex. 88 and then matter was posted for evidence on 16-02-2018. This itself reveals the conduct and bonafides of plaintiffs and defendant No. 9, 11, 25 to 27 in the present matter. The present matter is always kept as per request and convenience of both sides. It is pertinent to mention that an opportunity needs to be given to defendant No. 9, 11, 25 to 27 to cross examine PW1 and PW3. It is pertinent to mention that documents are filed on record to substantiate the submissions of defendant No. 9, 11, 25 to 27 and their counsel with regards to Mr. Thakare being not well on 05-03-2019 and even no prejudice as such would be caused to plaintiffs if they are compensated by cost. On the basis of arguments of rival sides, applying ratio of cases cited supra, I am of the opinion that instant application needs to be allowed in the interest of justice. I am inclined to pass following order.

ORDER

1. The application at Ex. 105 is allowed subject to payment of cost of Rs. 1000/- (One Thousand Only) in DLSA/TLSA and Rs. 1000/- (One Thousand Only) to other side. On failure to deposit costs in Court instant matter would proceed further in accordance with law.
2. Both the parties are directed to co-operate with the court for deciding the matter since the same is of the year 2014.
3. Both the parties are directed not to seek frivolous adjournments or adopt dilly dallying and to assist the Court in disposing of the present matter.
4. Both the parties and their counsel are directed to note the observations of this court and comply accordingly. Defendant No. 9, 11, 25 to 27 to cross examine plaintiffs witness PW1 and PW3, after payment of cost.

Place:- Chandwad

(N. A Ingley)

Date:- 26-02-2020.

Civil Judge Junior Division

Chandwad