

Order Below Exhibit 51

Defendant no. 1 filed this application to set aside no cross examination order passed against him.

2. He has contented that he filed written statement and issues are framed at Exhibit 24 and the burden of issue no. 3 is on defendant. Plaintiff has filed his evidence affidavit on Exhibit 25. Defendant no. 1 is ill and cannot make any physical movements. He is suffering from paralysis. Earlier Adv. Shri Sonawne was looking after the case of defendant no. 1 has also filed general power of attorney as he cannot attend the Court. Defendant has failed to cross-examine plaintiff on 10.02.2020, 26.03.2020, 12.07.2021. Thereafter, the suit was pending for order at Exhibit 24. On 13.10.2023 Defendant no. 1 sought adjournment for cross examination through his Learned Advocate. Thereafter on 08.08.2023 adjournment was rejected and no cross order was passed. Thereafter, Defendant no. 1 filed application to frame additional issues which was rejected on 12.07.2024. Further he has prayed that if he is not permitted cross examine defendant the suit will not decided on merits. Hence, in the interest of justice no cross order be set aside.

3. Plaintiff has filed his say at Exhibit 52 stating that the application is false and illegal. Further plaintiff has filed his evidence affidavit at Exhibit 25 on 30.11.2019 and defendant received the copy on 07.11.2020. On 10.02.2020 no cross order was passed against defendant no. 1. Thereafter, defendant no. 1 filed adjournment application on 07.02.2023. And the said application was allowed with cost as defendant failed to pay the amount of

cost he was later declined to conduct the cross-examination. Defendant has frequently failed to cross-examine plaintiff. Despite giving sufficient opportunities application at Exhibit 51 only to prolong the matter.

4. Heard both the sides at length. Learned Advocate for defendant no. 1 filed rulings of ***Hon'ble Supreme Court in the case of Food World Supermarket Ltd and Anr. Vs. Sujan Singh and Ors AIR 2009 SC (Supp) 2249, Hon'ble High Court in the case Harish Shankar Mokale Vs. Mohamad Iqbal Yakubji AIROnline 2020 Bom 1591, in the case of Devand Shiva Kudnekar Vs. Damodar Sitaram Kerkar AIROnline 2019 Bom 535, and in the case of Prabhakar Xembu Vs. State of Goa and Ors AIROnline 2022 BOM 3911.*** In the present rulings Hon'ble Supreme Court and Hon'ble Bombay High Court has held that refusal of cross-examination would cause prejudice to the defendant to his defence. Reasonable explanation can be considered. Court must state liberal view.

5. Perused the application and say. Perused the record. The suit is filed for specific performance of contract. Plaintiff has filed an evidence of affidavit on 30.11.2019 . Defendant received the copy on 07.01.2020. Further examination in chief was recorded on 10.02.2020. After granting several opportunities no cross order was passed on 08.08.2023. Thereafter, defendant filed an application to set aside the order which was rejected at Exhibit 36. Defendant failed to pay cost at Exhibit 39. Thereafter, adjournment was sought due to illness of defendant no. 1. Due to illness of defendant no. 1 GPA was filed on record on 07.11.2023. Thereafter, on 05.11.2024 defendant no. 1 changed his counsel and filed the present application seeking permission for cross examination of plaintiff. It is seen that defendant has taken many adjournment for some or the other reasons which caused delay in the proceedings so far. The suit is more than ten years old and pending for

evidence of plaintiff as defendant has filed several applications for setting aside no cross orders. Though, defendant has changed his learned counsel to look after the case it has caused hardship to the plaintiff. Plaintiff is regularly attending the Court. Party should not suffer due to negligence of their Counsel as well. However considering the guidelines in the above mentioned rulings of Hon'ble Supreme Court and Hon'ble High Court and in the interest of justice it would be appropriate to allow defendant to cross-examine the plaintiff and grant last chance for the same. Hence I pass the following order.

ORDER

1. The Application is allowed subject to cost Rs. 1000/- payable to plaintiff forthwith.
2. On payment of cost No cross order passed against defendant no. 1 is hereby set aside under Section 151 of C.P.C.

Date: 16.01.2025
Place: Sinnar

Sd/-
(K.S. Khandre)
2nd Jt. Civil Judge Junior
Division, Sinnar