



ORDER BELOW EXH.29 IN R.C.S. NO.648/2017

(CNR No.MHOS10-001226-2017)

This application is filed by plaintiff for setting aside order passed below Exh.26 proceeding the present suit without considering his affidavit in lieu of examination-in-chief.

2] According to plaintiff, he was suffering from illness since long. Therefore, he could not remain present before the Court for cross-examination. As a result, the Court has passed order below Exh.26 on 24.11.2023 proceeding the present suit without considering his affidavit in lieu of examination-in-chief. Now, plaintiff is ready and willing to be present for his cross-examination on further dates. Hence, he prayed for setting aside order passed below Exh.26.

3] Defendants resisted the application by filing say on the overleaf of the application. According to them, reason mentioned in the application is not proper. Plaintiff has deliberately remained absent for cross-examination. Hence, defendants prayed for rejection of the application. In the alternative, defendants submitted that if the application is allowed, heavy costs be saddled on the plaintiff.

4] Perused application and say. Heard both sides.

5] I have gone through the record and proceedings. Plaintiff has filed his affidavit in lieu of examination-in-chief at Exh.26 on 05.01.2022. As plaintiff failed to remain present for his cross-examination within reasonable time, the present suit proceeded

without considering his affidavit in lieu of examination-in-chief, as per order passed below Exh.26 on 24.11.2023.

6] The primary reason provided by plaintiff for setting aside order passed below Exh.26 is that he was suffering from illness since long and therefore he could not remain present in the Court. The reason given by plaintiff for setting aside order passed below Exh.26 is not justifiable, because plaintiff has not produced any material on record to substantiate his contents. Not only this, after filing affidavit of examination-in-chief on 05.01.2022, plaintiff failed to remain present before the Court for several dates. However, plaintiff deserves a chance to contest the present suit on merits based on the principle of natural justice. Therefore, in order to decide the suit on merit, it is expedient to give plaintiff an opportunity to remain present for his cross-examination. While fixing the quantum of costs, it is important to note that order is passed against plaintiff below Exh.26 on 24.11.2023 and application to set aside the said order is moved on 07.08.2024, after lapse of several dates. Considering this period, it will be proper to impose costs of Rs.500/- on the plaintiff to be paid by him to defendants. Accordingly, I pass following order :

ORDER

1. The application is allowed.
2. Order passed below Exh.26 proceeding the present suit without considering affidavit in lieu of examination-in-chief of plaintiff is set-aside subject to costs of Rs.500/- (Rupees Five Hundred only) to be paid by plaintiff to defendants.

..3..

3. Plaintiff is directed to remain present on the immediate next date and further dates, if needed for his cross-examination.

Date : 12.02.2025

Place : Washi

(H.M. Momin)

Jt. Civil Judge, Junior Division,
Washi