

ORDER BELOW EX. 52
(Passed On 06th April 2024)

1. This is an application for permission to cross examine plaintiffs witness PW2 & PW3 preferred by defendant No. 6 to 11.

2. Perused the application and read the reply. I have heard Mr. R.S. Jagtap learned counsel for plaintiffs and Mr. P.D. Shinde learned counsel for defendant No. 6 to 11.

3. Mr. Shinde learned counsel for defendant No. 6 to 11 submitted that plaintiffs have filed present suit for perpetual injunction against defendants. Mr. Shinde submitted that present matter was fixed for recording evidence and cross examination of PW2 & PW3 on 04-03-2024 at the instance of defendants and plaintiffs had filed affidavit of examination in chief of PW2 & PW3 on record. Mr. Shinde submitted that defendant No. 6 to 11 were absent and thus they failed to file application for seeking time to cross examination of PW2 & PW3 hence, Court was pleased to pass order of no cross examination on PW2 & PW3 on 04-03-2024. Mr. Shinde submitted in absence of non cross examination of plaintiffs witness PW2 & PW3, defendant No. 6 to 11 would suffer irreparable loss. Mr. Shinde submitted in consonance to his application and prayed to permit defendant No. 6 to 11 to cross examine plaintiff witness PW2 & PW3 and accordingly prayed to allow the instant application.

4. Mr. Jagtap learned counsel for plaintiffs vehemently opposed the instant application and submitted that the instant application at this stage is not maintainable. Mr. Jagtap submitted that defendant No. 6 to 11 are negligent and careless in the instant matter and presently matter is fixed for evidence of defendants but deliberately the instant application is filed. Mr. Jagtap submitted that defendant No. 6 to 11 and their counsel were absent but plaintiffs are diligent and vigilant in contesting the instant matter hence, it proceeded accordingly. Mr. Jagtap submitted this court has already granted sufficient opportunity to defendant No. 6 to 11 to cross examine PW2 & PW3 but defendant No. 6 to 11 failed to cross examine PW2 & PW3 as defendant No. 6 to 11 and their counsel were absent hence, this court had rightly passed the order and proceeded with instant matter. Mr. Jagtap submitted that no cross examination order was passed by Court on on 04-03-2024 and present application is filed on 06-04-2024 this itself reveals the vigilance and diligence of defendant No. 6 to 11 in contesting the present matter. Mr. Jagtap submitted that present application is filed with ulterior motive just to harass plaintiffs. Mr. Jagtap submitted in consonance to his reply and prayed to out rightly 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 had filed affidavit of examination in chief of PW2 & PW3 on 14-12-2023 and further examination of chief and no cross order was passed on 04-03-2024. It is pertinent to mention that present matter is progressing at snails pace mostly at the instance of defendants. The present matter is always kept as per request and convenience of both sides. This itself reveals the vigilance and diligence of defendant No. 6 to 11 in the present matter. As enough opportunity and chances were given to plaintiffs to adduce evidence, an opportunity needs to be given to defendant No. 6 to 11 also. It is pertinent to mention that 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. In the result, I am inclined to pass following order.

ORDER

1. The application at Ex. 52 is allowed subject to payment of cost of Rs. 750/- (Seven Hundred & Fifty Only) to other side & cost of Rs. 750/- (Seven Hundred & Fifty Only) in TLSA. On failure to pay cost to plaintiff or to deposit cost in Court & TLSA till next date 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 2022.
3. Both the parties are directed not to seek frivolous adjournments or adopt dilly dallying tactics and to assist the Court in disposing of the present matter.
4. Both the parties and their counsel are directed to comply accordingly. Defendant No. 6 to 11 to cross examine plaintiffs witnesses PW2 & PW3, after payment of cost.

Place:- Kallam

Date:- 06/04/2024

(N. A Ingley)
Civil Judge Senior Division
Kallam

CERTIFICATE

This is to certify that the Presiding Judge has himself typed the order and contents of this copy are correct as per original order. I have duly examined and found to be correct as per the original. The order is uploaded by Stenographer after taking it in Pen Drive.

Dictated on : Personally Typed By
Presiding Judge.
Transcribed on : 06/04/2024.
Checked & Signed on : 06/04/2024.

Sd/-
(S.R.Kale)
Stenographer Grade-II
Civil Court Senior Division,
Kallam.