

ORDER BELOW EXH. 68 IN R.C.S. No. 44 OF 2004

The present application is filed by the plaintiff to set aside the no cross-examination order of D.W. No. 05 passed on 14.02.2014.

2) The plaintiff contended that his advocate could not remain present for cross-examination of defendant's witness in morning session as he was engaged in another Court therefore, no cross-examination of D.W. No. 05 is passed against the plaintiff on 14.02.2014. He would suffer irreparable loss in case he is not allowed to cross examine the defendant's witness.

Hence prayed to allow the application.

3) The defendant resisted the application vide his say contending that the applicant has not given sufficient reason and suit was pending since long for cross examination. Therefore he prayed for dismissal of application by imposing heavy costs on applicant.

4) Perused the application and say.

5) Heard.

6) On perusal of the record, it is apparent that the learned advocate for the plaintiff remained absent on 14.02.2014. Therefore no cross order came to be passed on Exh. 63. However, to decide the suit on merit an opportunity needs to be given to the plaintiff to cross examine the defendant's witness. However the hardship suffered by the defendant can be compensated by imposing costs on the plaintiff.

Accordingly, the following order is passed:-

ORDER

1. The application (Exh. 68) is hereby allowed subject to payment of costs of Rs. 500/- to be paid by the plaintiff to the defendants on or before next date.
2. On payment of cost of Rs. 500/- to the defendants, the defendant shall produce his witness for cross examination.

Mahad.
Date: 05.02.2019

(V. R. Doifode)
Jt. C.J.J.D., Mahad.