

RCS No.31/2020

Mahesh Baban Mahadik etc.3

Vs

Suresh Babu Mahadik etc. 8

ORDER BELOW EXH.95

This application is filed by the defendant no.2 for setting aside evidence of the defendant no.2 was not considered as per order below Exh.79 dated 23.02.2026. Ld. Advocate of the plaintiff filed his say and submitted that, though the defendant no.2 filed his examination in chief affidavit he was absent thereafter for many dates before the court. Therefore, this court has passed order below Exh.79 and evidence of the defendant no.2 was not considered as he was not subjected for cross examination. Therefore, this application should be rejected and in case in the interest of justice this application may be allowed subject to cost be paid to the plaintiff.

2. Heard Ld. Advocate for the plaintiff and defendant no.2 on perusal of record and proceeding it appears that, the plaintiffs have filed this suit against the defendants for open and vacant possession of the suit property and perpetual injunction. Defendants no.1 to 6 have filed written statement at Exh.13. Plaintiffs have carried out several amendments and defendants no. 1 to 6 have also filed amended W.S. at Exh.68. Thereafter, issues were settled on 03.08.2023 at Exh.42. The plaintiffs have lead their evidence. In view of order below Exh.1 dated 30.09.2024 plaintiffs further evidence was closed. On 11.11.2024 the defendant no.2 filed his examination in chief affidavit at Exh.79. Since then as per request of the plaintiffs advocate cross examination was pending. Since then in spite of sufficient opportunities the defendant no.2 was absent from 21.01.2026,

23.02.2026 so in view of **Banganga Cooperative Housing Society Ltd.V/s Vasanti Gajanan Nerurkar** as the defendant no.2 was not offered himself for cross examination his evidence was held inadmissible as per order dated 23.02.2026.

3. However, considering issues settled as above until the defendant no.2 gets an opportunity to lead evidence their dispute can not be settled in this suit. Whatsoever delay have been caused by the defendant no.2 for offering himself for cross examination can be compensated in terms of money as per section 35 of CPC. So, denying the defendant no.2 to offer himself for cross examination amounting another round of litigation. Thus, in the interest of justice order passed on Exh.79 dated 23.02.2026 needs to be set aside subject to cost of Rs.500/- be paid to the plaintiffs. Thus, following order is passed.

-: ORDER :-

1. This application is allowed.
2. No evidence order passed below Exh.79 dated 23.02.2026 is set aside subject to costs of Rs.500/- be paid to the plaintiffs.

Sd/-

(Y. C. Patil)

Date : 16.06.2026.
Chiplun.

Jt. Civil Judge J.D., Chiplun.

:-Certificate :-

I Affirm That The Contents Of This Order And The P.D.F File Of This Order Are Same, Word To Word, As Per The Original Order.

Name Of Stenographer	Shri.M.E.Arekar
Name Of Court	Jt. C.J.J.D.& J.M.F.C.,Chiplun
Date Of Decision	16/06/2026
Order Signed By The P.O. On	16/06/2026
Order Uploaded On	16/06/2026