



ORDER BELOW EXH.79 IN RCS NO.57/2009
MHSI06-000541-2009

1. By present application, defendant No.1 has prayed for setting aside 'No cross' order passed below evidence affidavit of the PW-1 namely Nancy Gonsalvis at Exh.75. It is stated that, due to personal reason Ld. Advocate for defendant Shri. B. N. Prabhu unable to attend the Court proceeding and to conduct cross-examination of said witness. Hence, "no cross-examination" order has been passed against defendants. Non-appearance of advocate is not deliberate and if, defendant is not allowed to cross-examine said witness then, prejudice would be caused to the defendants. Hence, he prayed for setting aside 'no cross-examination' order and to allow him opportunity to cross-examine the witness.

2. Plaintiff has filed his say and objected the application by stating that, defendant has not filed W.S. and not contested the suit of the plaintiff. As, such there is no pleading challenging the plaint. Hence, in view of provisions of C.P.C., it can be presumed that, the case is admitted by defendant. Defendant cannot be treated as adversary party. Hence, defendant has no right to cross-examine the plaintiff. Hence, accordingly order of no cross-examination by defendant is proper and correct and said order need not to be set aside. Hence, application being devoid of merit may be rejected.

3. Perused application and say.

4. Heard both the sides.

5. Present suit for partition is filed on 16.07.2009. It was referred for mediation on time to time. Suit is proceeded *Ex-*

parte against defendant No.2 on 20.09.2012 and abated against defendant No.6 on 05.12.2016. Suit proceeded without W.S. of defendant No.1, 3 and 4 on 07.12.2009, 21.02.2013 respectively. LR's of defendant No.6 failed to appear in the suit, hence, suit is proceeded *Ex-parte* against defendant No.6(A) and 6(B) on 21.07.2022. Defendant No.1 appeared in the suit on 31.08.2009. However, he has not filed W.S. on record. Plaintiff has filed examination-in-chief affidavit on 12.01.2024. However, defendants were absent and no application placed record. Hence, no cross-examination order has been passed against them on 20.04.2024. Thereafter, on 15.06.2024, present application is moved by the defendant No.1.

6. Admittedly, defendant No.1 has not filed his W.S. on record. Therefore, there is substance in the say filed by the plaintiff. However, it is settled position of law in decision of the Hon'ble Supreme Court in **Ranjeet Sing and Ors. Vs. State of Uttarakhand and Ors.** and other decisions of Hon'ble Apex Court also that, even if a defendant does not filed written statement and suit is order to proceed *Ex-parte* against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses, examined by the plaintiff to prove the falsity of the plaintiff's case. Defendant can always urged, base on the plaint and the evidence of the plaintiff that, the suit was barred by the statute such as the law of limitation etc.

7. Therefore, opportunity of cross-examination cannot be taken away on the grounds that, defendant failed to file to

his W.S. on record. He can be allowed for limited purpose to cross-examine the plaintiff's witnesses as mentioned above. However, the conduct of the defendant is also necessary to be taken into consideration. Hence, plaintiff need to be compensated by way of costs. Accordingly, I pass following order.

-:: **ORDER** :: -

1. Application is allowed and 'no cross-examination' order passed below the oral evidence of the PW-1 namely Nancy Gonsalvis (Exh.75) stands set aside subject to payment of costs of Rs.1000/- (Rs. One Thousand only).
2. Costs shall be paid to the plaintiff on or before next date.
3. Parties are directed to remain present on next date without fail. On failure to conduct cross-examination on next date, order stands vacated automatically.

(Dictated and Pronounced in open Court.)

Date:16/01/2025

Place:Sawantwadi.

(Smt. R.G.Kumbhar)

Jt. Civil Judge (J.D.),

Sawantwadi.