

Order passed below Exh. 77 in R.C.C.No. 91/2010

01. Read the application and say. The defendants have filed this application to give them an opportunity to give evidence on the preliminary issue. It is submitted by them that inadvertently on 07/08/2015 pursis was given by defendants that they do not want to lead evidence on preliminary issue, as the Ld. advocate of them was absent on that day. Due to which they were not able to take advice of their Ld. Counsel and inadvertently gave the pursis. It is further submitted that if opportunity is denied to give them evidence on preliminary issue they will suffer loss which cannot be compensated in terms of money. Therefore, they prayed for allowing the application.

02. Plaintiffs objected it on the ground that application is false and the provision is not mentioned under which application is given. It is further submitted that defendants have not inadvertently given the pursis, therefore they prayed for application be rejected.

03. It is well settled that mentioning or non mentioning of provision under which the application is made is not so material it is the technical thing. In P.K. Palanisamy vs N. Arumugham 2009((9)SCC173 the Hon'ble Apex Court have held that it is well settled principle of law that mentioning of wrong provision or non mentioning of a provision does not invalidate order if the Court had the requisite jurisdiction. It is well settled that justice cannot be scarified on the alter of procedural technicalities.

04. Perused record it appears that on the relevant day the Ld. Advocate of defendants was not present. In circumstances the reason assigned by defendants seems bonafide that inadvertently they have given the application that they did not want to lead evidence on preliminary issue. It is natural and obvious that client has not so much legal knowledge that of their advocate. As principle of natural justice a party must be given chance to put up their case. Preliminary issues is framed in this

matter opportunity to lead evidence is denied to the defendants the application will not be decided on merit. Thus it will ultimately result into multiplicity of proceeding between parties. Therefore in the interest of justice application deserves to be allowed it will also help to avoid multiplicity of proceeding between the parties as well as to decide the application on merit. Hence following order is passed.

Order

01. Application is allowed.
02. Defendants are given permission to lead evidence on preliminary issue.

Sd/-

Date. 06/01/2017

(S.H.Panhale)
Civil Judge J.D.Malvan.