

Order Below Exh.137 In R.C.S.No.278/2015
(Shila Patil etc. Vs. Sampat Patil etc.)
(CNR No. MHSN050015592015)

1. The present application is filed by defendant No.3 and 4 through their G.P.A. for setting aside no cross order passed against them.

2. It is submitted that these defendants have adopted W.S. of defendant No.1 by filing pursis Exh.50. Thus their pleading of defence is available on record. Accordingly issues were framed and plaintiff adduced her evidence below Exh.100 on 06.12.2023. Due to non appearance of these defendant no cross order was passed against them. In the present suit valuable rights of defendants in respect of suit property are involved. Therefore, opportunity to cross examine to plaintiff witness if denied, it would cause irreparable loss to them. On the other hand if permission is granted it would help to decide fact in issue on merits. It will not cause prejudice to either party. Thus prayed to allow the application.

3. Ld. Advocate for plaintiff strongly resisted the application. It is submitted that the defendant willfully and with malafide intention chosen not to remain present in this proceeding. The reason mention in the application is neither sufficient nor good. Therefore application needs to be rejected.

4. Heard both side. Peruse the record.

5. The present suit is filed for the relief of declaration and injunction against defendant in respect of sale transaction with

defendant No.12 to 14. After framing of issues the plaintiff adduced her evidence on 06.12.2023. On 06.01.2024 further chief was recorded and matter posted for cross examination by defendant No.1 to 11. However neither defendant nor Ld. Advocate was present. Thus matter adjourned for further orders. On 02.03.2024 again defendant No.1 to 11 remain absent without assigning reason and representation. Hence no cross order was passed. By way of present application the defendant No.3 and 4 prayed to set aside this order.

6. The record suggests that after said order cross examination at the hands of defendant No.12 to 14 was recorded and evidence close pursis was filed by the plaintiff.

7. Thereafter on two occasions matter posted for evidence of defendant No.1 to 11, but due to their non appearance without any representation and application evidence closed order passed against them. Thereafter defendant No.12 to 14 also adduced their evidence by way of chief affidavit of defendant No.12 below Exh.130.

8. Indeed, right to cross examination to witness of other side is valuable right to ascertain not only truthfulness but also to bring real fact on record. As mentioned above the conduct of defendant called for order such as no cross. However if such order is not set aside it would cause prejudice to parties to suit as the possibility of multiplicity of litigation cannot be ruled out. However while giving opportunity for cross examination considering the conduct costs need to impose. Hence following order.

ORDER

1. Application is allowed on the cost of Rs.1500/- and it be paid to plaintiff.

2. The cost to be paid as prerequisite condition on 18.09.2024 and cross examination to be recorded without fail, any failure will be followed by consequential orders. Take note.

Islampur
Date : 04/09/2024

(M. M. Chitale)
IInd Joint Civil Judge Senior Division,
Islampur.

CERTIFICATE

“ I affirm that the contents of this PDF file order are the same, word to word, as per the original order.

Name of the Steno with Post	:	Shri. S. K. Patil (Stenographer Grade-II)
Name of the Court	:	IInd Jt. Civil Court Senior Division, Islampur.
Date of pronouncement of order	:	04/09/2024
Order signed by the PO.on	:	04/09/2024
order uploaded on	:	05/09/2024