

(CNR No.: -MHSN06-001409-2012)
(Ramchandra Sakharam Kadam-Others V/s. Lahudas Sakharam Kadm-2)

ORDER BELOW EXHIBIT 110 IN REGULAR CIVIL

SUIT No.401/2012

(Order dated 03/10/2019)

1. This application is filed by defendant No.1 Lahudas Sakharam Kadam to set aside order of discarding his evidence recorded as per examination-in-chief at Exhibit 107.

2. It is contention of defendant No.1 that, he has filed his affidavit of examination-in-chief at Exhibit 107. He is 78 years old. He is suffering illness and he has to visit hospital frequently. On 17/07/2019 he was at hospital and therefore he could not remain present in the court. Therefore, by passing order, evidence of defendant No.1 recorded as per examination-in-chief at Exhibit 107 has been discarded. To decide the suit on merit and to put his case, he prayed to set aside order of discarding evidence. If, the application is not allowed, he will suffer irreparable loss. Whereas, if application is allowed, it will help to decide the matter on merit. Hence, considering these reasons and in the interest of justice to hear both parties on merits, it is necessary that order of discarding evidence of defendant No.1 be set aside.

3. Plaintiffs have filed their say and objected the application on ground that reasons stated in the application are not proper. It is further submitted that, defendant No.1 is remained absent on various dates, therefore, his evidence is discarded. Reasons are not satisfactory and thus prayed for rejection of the application.

4. Perused application, say and the record of case. Heard both side.

5. On perusal of the application, it reveals that, reasons stated in the application for not appearing and failure to remain present on time, appears to be proper and justifiable. Though, the defendant No.1 has remained absent, to decide the suit on merit it is necessary to heard his side. Therefore, in the interest of justice & for deciding real dispute between the parties, order of discarding evidence of defendant No.1 deserves to be set aside. The delay caused can be compensated by imposing cost on defendant No.1 In the result, I pass following order.

ORDER

1. Application is allowed.
2. Order dated 17/09/2019 in respect of discarding evidence of defendant No.1 recorded at 107 is set aside subject to payment of costs of Rs.500/- (Five Hundred Rupees only) to plaintiffs as condition precedent.
3. Payment of cost Rs.500/- to plaintiffs till next date is condition precedent, otherwise suit will be heard without evidence of defendant No.1.

Place: Miraj.

(Nilesh M. Wali)

Date: 03/10/2019.

Jt.C.J.J.D., Miraj.

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.

Court : Jt.C.J.J.D. & J.M.F.C., Miraj.

Judgment/Order signed by
the Presiding Officer on : 03/10/2019.

Judgment/Order uploaded on : 04/10/2019.