

ORDER BELOW EXH.51

In Regular Civil Suit No. 119/2015

The defendants have filed present application for setting aside no cross order passed against them on 27.09.2017.

2- It is their contention that due to paralysis defendant No.1 was unable to attend the court. The remaining defendants have also failed to present before the court on the given date due to illness of defendant No.1. Accordingly, no cross order is passed against them. In order to decide the matter on merit and in the interest of justice no cross order passed against them be set aside. Lastly, prayed that application be allowed.

3- The plaintiff has resisted this application by filing his say on it. It is the contention of plaintiff that the defendants have given full opportunity to cross examine the witness but they have failed to take cross examination. Prior to passing no cross order, defendants have filed adjournment application (Exh.45 to 50). All these applications are allowed and sufficient opportunity has been given to defendants. After that on 27.09.2017 the defendants have willfully remained absent and no cross order passed against them. In such situation, the

reason given by the defendants for setting aside no cross order is not tenable in the eye of law. Lastly, prayed that application be rejected with costs.

4- Heard both sides. On perusal of record and proceeding of the case, it appears that defendants have filed adjournment applications (Exh.45 to 50) and all are allowed. It shows that more than sufficient opportunity has been given to defendants for taking cross examination of plaintiff. On 27.09.2017, defendants and their learned advocate have remained absent whenever called for cross examination. Learned advocate for the defendants has not filed application for adjournment on the same day. In such situation, the reason given by the defendants for setting aside no cross examination order is not justifiable because, on same day learned advocate for the defendants has not filed application for adjournment. The defendants have remained absent and they have failed to take cross examination of the plaintiff. The conduct of the defendants show that they are interested to prolong the matter unnecessarily. However, in the interest of justice and for deciding the matter on merit, cross examination of plaintiff is necessary. Hence, in the interest of justice application is required to be allowed subject to heavy costs. Therefore, I pass following order.

ORDER.

1. Application (Exh.51) is allowed subject to costs of Rs.500/- (Rs.Five Hundred).
2. No cross order passed against the defendants is hereby set aside.
3. Cost be paid to plaintiff.
4. The defendants to pay costs of Rs.500/- within eight days from the date of this order.

Date:-10/01/2019.
Kavathe-Mahankal.

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(Manoj C. Nepte)
Jt. Civil Judge, Junior Division,
Kavathe-Mahankal.