

Order Below Exh.69.
(Passed on 17.07.2019)

The plaintiff filed present application to set-aside the order of 'evidence struck out' passed against him.

2. Present suit is for permanent injunction. It is the contention of the plaintiff that present suit is fixed for recording of evidence and the plaintiff filed his examination-in-chief. But, due to illness, on 05.12.2018 plaintiff remains absent and the court passed order of 'evidence struck out' against him below Exh.55. It is further contention of the plaintiff that if said order is not set-aside, then irreparable loss will be caused to him. Hence, he prayed for set-aside order of 'evidence struck out' passed against him.

3. Learned counsel for defendant nos.1 to 7 filed his say at Exh.73. It is the contention of above defendants the court has passed 'evidence closed' order against the plaintiff. The plaintiff failed to pay cost amount, imposed against him. Defendants have filed affidavit of examination-in-chief on their behalf. Even though, the court come to allow the application, heavy cost may be imposed to them.

4. Perused the application, say and record. Heard the learned counsel for defendants and the plaintiff.

5. The record reveals that the affidavit of evidence is filed on record on 16.09.2017. On 10.01.2019 order of

'evidence struck out' is passed against plaintiff and present application is filed on record on 12.03.2019. The said application is supported with affidavit.

6. On perusal or record, it reveals that the suit is for permanent injunction. No doubt, there is a delay of 2 months and 2 days to file this application. But, the said delay can be taken into consideration by imposing the cost. To decide the matter on merit, the evidence of both parties on record is essential. The plaintiff is ready to give evidence. The oral evidence is plays a vital role to prove case as per pleadings. If permission is not granted, then, the plaintiff can not prove his pleadings. Considering all above facts, in the interest of justice, application deserves to be allowed. Hence, I pass the following order.

ORDER

1. The application is hereby allowed subject to cost of Rs.150/- (Rupees one hundred fifty only).
2. The cost amount be paid to the Legal Aid Committee, Shirala, till next date. Otherwise, previous order of 'evidence struck out' will be in force.

Date- 17.07.2019
Shirala.

(B.M. Kale)
Civil Judge (J.D.), Shirala.

CERTIFICATE

I affirm that the contents of this P.D.F. file are same word to word as per original order.

Name of Steno	:	S.N. Pethkar (Steno. Grade-3)
Court Name	:	C.J.J.D. & J.M.F.C., Shirala.
Date	:	17.07.2019.
Signed by Presiding Officer on	:	17.07.2019.
Uploaded on	:	18.07.2019.
