

**ORDER BELOW APPLICATION (EXHIBIT 71) IN**  
**M. A. C. P. NO. 55/2016**  
**(SUREKHA & OTHS. VS. VIKAS & OTH.)**  
**(PASSED ON : 08/11/2022)**

**Nature of the Application.**

1. This is an application filed by opponent No. 2 (for short 'opponent') to set aside no cross order passed against it and to allow it to cross-examine.

**Contents in the Application.**

2. The opponent has contended that as its advocate was busy in other work it was not possible to cross examine the opponent No. 1 and no cross order is passed against it. Now, it is intending to cross examine the opponent No. 1. Therefore, in the interest of justice it is necessary to grant this application.

3. On these grounds the opponent has prayed to grant the application.

**No Say of the Petitioners and the Opponent No. 1.**

4. The petitioners and the opponent No. 1 have failed to file say.

5. Hence, the application proceeded without say of the petitioners and the opponent No. 1.

**The Argument.**

6. I have heard Shri. A. V. Velapure, advocate for the opponent, at length and Shri. A. N. Patil, advocate for the petitioners, on the law points only.

7. They argued in consonance with their contentions in their application and established principles of law. I will deal with those at the time of discussing the points taken for consideration.

**Points and Findings.**

8. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons stated below :-

	<b><u>Points</u></b>	<b><u>Findings</u></b>
1.	Can the 'no cross' order passed against the opponent be set aside, as prayed for ?	Yes.
2.	What order ?	Application Granted, As per final order.

**Reasons as to Point Nos. 1 & 2.**

9. The opponent though was aware of the date of hearing failed to remain present and take steps to cross-examine the witness.

10. It is well settled principle in law that too technical or pedantic approach in cases of permitting any party to lead evidence even at late stage is not called for. The Court have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having is determined on merits unless he has, by gross negligence, deliberate inaction, or something akin to misconduct, dis-entitled himself from seeking the indulgence of the Court.

11. In my view, considering the nature of the petition it is necessary in the interest of justice to allow the opponent to cross-examine the witness.

12. Further, if the opponent is allowed to cross-examine the witness, the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore, also no cross order passed against

opponent is required to be set aside.

13. According to the opponent, it is necessary to cross-examine the witness. In my view, considering the nature of the petition an opportunity is required to be given to the opponent to cross-examine the witness, which will help to arrive at proper conclusion.

14. Above all, if the application is allowed no harm or injustice will be caused to the petitioners but it will help to decide the petition on merit. Therefore, keeping in mind the legal principles, supra I am inclined to give an opportunity to the opponent to cross-examine the witness in the interest of justice.

15. After giving thoughtful consideration to the facts of the case and the averments made by the opponent in this application and arguments advanced by Shri. Gavai, advocate for the opponent, I am of the considered view that for just decision of this petition it is necessary to give an opportunity to the opponent to cross-examine the witness in order to find out the truth in the allegations made by the petitioners.

16. I am unable to persuade myself with arguments of the petitioners that the application is not tenable, for the simple reason that a litigant ought not to be denied an opportunity of having his determined on merits and my findings, supra.

17. In short, relying on the principles discussed, supra and the facts and circumstances of the case, I am inclined to grant this application, and allow the petitioners to cross-examine the witness.

18. Accordingly, I answer Point No. 1 in the affirmative and Point No. 2 as application granted, as per final order.

19. In the result, order.

**ORDER**

The application (Exhibit 71) is granted and the opponent No. 2 is allowed to cross-examine the opponent No. 1.

(Pronounced in the open Court).

Dated : 08/11/2022.

(M. B. Lambe),  
Ex Officio Member, M.A.C.T.  
Pandharpur.

**C E R T I F I C A T E**

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 08/11/2022
- (d) Order uploaded on : 08/11/2022