



ORDER BELOW APPLICATION (EXHIBIT 83) IN
M. A. C. P. NO. 55/2016
(SUREKHA & OTHS. VS. VIKAS & OTH.)
(PASSED ON : 23/01/2024)

Nature of the Application.

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

Contents in the Application.

2. The opponent has contended that due to oversight it was not possible to cross examine the petitioner and their witnesses and no cross order is passed against him. Now, he is intending to cross examine the petitioner and their witnesses. 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.

Contents in the Say of the Petitioners.

4. The petitioners have filed say and have strongly objected the application.

5. The petitioners have contended that the application is not legal and tenable. No sufficient reason is shown to grant the application.

6. On these grounds, the petitioners have prayed to reject the application with costs.

The Argument.

7. I have heard advocate for the opponent and advocate for the petitioners, at length.

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

Points and Findings.

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

	Points	Findings
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.

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

11. 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.

12. 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 petitioner and their witnesses.

13. Further, if the opponent is allowed to cross-examine the petitioner and their witnesses, 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.

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

15. 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 petitioner and their witnesses in the interest of justice.

16. After giving thoughtful consideration to the facts of the case and the averments made by the opponent in this application and arguments advanced by 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 petitioner and their witnesses in order to find out the truth in the allegations made by the petitioners.

17. 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 lis determined on merits and my findings, supra.

18. 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 opponent to cross-examine the petitioner and their witnesses.

19. However, due to inability of the opponent to cross examine the petitioner and their witnesses, the petitioners have unnecessarily suffered. Therefore, I am of the view that the petitioners need to be compensated reasonably by awarding suitable costs. The Taluka Legal Services Authority, Pandharpur is also entitled to share the cost amount, as directed from time to time by the Hon'ble Supreme Court and the Honb'le High Court. The cost is quantified at Rs. 150/- (Rs. One Hundred Fifty only), considering the nature of the application, delay caused and the overall conduct of the opponent.

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

21. In the result the following order.

ORDER.

1.	The application (Exhibit 83) is granted and the opponent No. 1 is allowed to cross-examine the petitioner and their witnesses subject to costs of Rs. 150/- (Rs. One Hundred Fifty only), to be deposited in the Court on or before 08/02/2024, failing which the application shall stand rejected, automatically.		
2.	The cost awarded shall be apportioned as herein below :-		
	a)	The petitioners.	Rs. 100/- (Rs. One Hundred only).

	b)	The Taluka Legal Services Authority, Pandharpur.	Rs. 50/- (Rs. Fifty only).
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(Pronounced in the Open Court).

Date : 23/01/2024.

Sd/-
(M.B.Lambe),
Ex-Officio Member, MACT,
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 : 23/01/2024
- (d)Order uploaded on : 29/01/2024