

ORDER BELOW EXH- 27 IN R.D.No.3/2009

Present application is filed by the legal representatives of deceased Judgment debtor to set aside no cross order dated 10.7.2015 passed below affidavit (Exh.24) of the decree holder.

2. It is asserted that the decree holder has brought them on record vide application (Exh.7) after the death of Judgment debtor. They have filed their reply (Objection) at Exh.16. They are illiterate. They were not in contact with their learned advocate. Hence, no cross order was passed. It is necessary to cross examine the decree holder. Else they would suffer irreparable loss. Hence, the application.

3. Decree holder has filed the say and opposed the application. According to him sufficient chances were given to the legal representatives of deceased Judgment debtor to cross examine the decree holder. However, they have failed to cross examine him. Hence, the order is proper. He has, therefore, prayed for rejecting the application.

4. Perused the record and proceeding. Heard both the sides. Only point which arise for consideration is : Whether the legal representatives of deceased judgment debtor have made out a case to allow the application?

5. Record shows that the affidavit (Exh.24) was filed by the decree holder on 21.01.2015. No cross order was passed on 10.7.2015. Said order was passed after a period of six months from the date of filing affidavit. On the day of passing order, judgment debtor and their learned advocate were absent and they

have not filed any application for seeking time to cross examine the decree holder. Reasons given in the present application are general and thus, not sufficient to set aside the order. Moreover, present proceeding being a regular darkhast, decree holder need not submit his affidavit in lieu of examination in chief and hence, question of cross examination does not arise. Needles to state that this court is not called upon to adjudicate the issues falling under Order XXI Rule 97 or Rule 99 of the Code of Civil Procedure. In such cases only, question of examination, cross examination and re-examination arises. Thus, there was no need for the decree holder to submit his affidavit. Be that as it may, legal representatives of deceased Judgment debtor have failed to make out a case to allow the application. Hence, the application stands rejected.

Date: 09.11.2016.

(S.K. Khan)
Jt. Civil Judge (J.D.),
Barshi.

CERTIFICATE

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

Name of Stenographer : Bhaskar G.B.

Court Name : S.K.Khan,
Jt.C.J.J.D.& J.M.F.C. Barshi

Date : 09.11.2016

Order signed by the
presiding officer on : 09.11.2016

Order uploaded on : 09.11.2016