

ORDER BELOW EXH. 128 IN R.G.S. No. 61/2005

The present application is filed by plaintiff no.2B for setting aside 'No Cross' order dated 29.07.2024 at Exh. 67. Defendant no.1 filed say and thereby denied the contentions of the plaintiff no.2B in toto. Heard learned advocate for the plaintiff no.2B and defendant no.1.

2. Ld. Advocate for plaintiff no.2B submitted that, defendant no.1 has filed his evidence affidavit (D.W. No. 1) on 16.07.2024 and no corss order is passed on 29.07.2024. But after the death of plaintiff, his legal heir plaintiff no.2B namely Snehal Gautam Nanaware appeared in the court. But due to lack of knowledge of suit to plaintiff no.2B, he failed to record the cross examination of defendant no.1. Plaintiff no.2B is ready to record the cross examination of defendant no.1. Further he submitted that, if opportunity is not given to him, he will suffer irreparable loss which cannot be compensated in terms of money. Hence, he prayed to set aside 'No Cross' order passed against him.

3. Per contra, the Ld. Advocate for defendant no.1 filed his say at Exh. 132 and submitted that, the reason is not proper. Due to carelessness of plaintiff no. 2B the suit is prolonged. Sufficient oppotunity is given to him. Hence, he prayed to reject the application.

4. On perusal of record, it reveals that the evidence affidavit of defendant no.1 was filed on 16.07.2024. Plaintiff no.2B did not cross examine defendnat no.1. Hence, no cross examination order passed against him on 29.07.2024 at Exh. 67. It is well settled principle of law that litigation has to be decided on the merits. The

substantial rights of the parties are involved in the matter. Therefore, the effective adjudication of suit on merit requires contest and participation of rivals. Further, if the application is rejected and permission to record cross examination of defendant no.1 is not granted, plaintiff no.2B will suffer hardship. He will not get the opportunity to defend himself. On the other hand, if the application is allowed, no loss will cause to the defendants. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, plaintiff no.2B needs to be given opportunity to record cross examination of defendant no.1.

5. In view of aforesaid discussions to my opinion plaintiff no.2B needs to be given an opportunity to put forth his defence and the application deserves to be allowed. At the same time the delay and inconvenience caused to the other side is required to be considered and compensated by awarding the cost. Thus, keeping in mind the object of awarding the cost viz. “compensate and not to punish” the application deserves to be allowed subject to cost of Rs.500/-. Accordingly, I pass following order;

ORDER

Application is allowed subject to cost of Rs. 500/- to be paid by plaintiff no.2B to defendants on or before next date.

Date : 17-10-2025

(V.K. Patil)
Civil Judge (J.D.), Mangalwedha.

ORDER BELOW EXH. 130 IN R.G.S. No. 61/2005

The present application is filed by plaintiff no.2B for setting aside 'No Cross' order dated 01.08.2024 at Exh. 71. Defendant no.1 filed say and thereby denied the contentions of the plaintiff no.2B in toto. Heard learned advocate for the plaintiff no.2B and defendant no.1.

2. Ld. Advocate for plaintiff no.2B submitted that, defendant no.1 has filed evidence affidavit of his witness namely Keshav Balu Nanaware (D.W. No. 2) on 29.07.2024 and no cross order is passed on 01.08.2024. But after the death of plaintiff, his legal heir plaintiff no.2B namely Snehal Gautam Nanaware appeared in the court. But due to lack of knowledge of suit to plaintiff no.2B, he failed to record the cross examination of D.W. No. 2. Plaintiff no.2B is ready to record the cross examination of D.W. No. 2. Further he submitted that, if opportunity is not given to him, he will suffer irreparable loss which cannot be compensated in terms of money. Hence, he prayed to set aside 'No Cross' order passed against him.

3. Per contra, the Ld. Advocate for defendant no.1 filed his say at Exh. 133 and submitted that, the reason is not proper. Due to carelessness of plaintiff no.2B, the suit is prolonged. Sufficient opportunity is given to him. Hence, he prayed to reject the application.

4. On perusal of record, it reveals that the evidence affidavit of D.W. No. 2 Keshav Balu Nanaware was filed on 29.07.2024. Plaintiff no.2B did not cross examine to him. Hence, no cross examination order passed against him on 01.08.2024 at Exh. 71. It is well settled principle of law that litigation has to be decided on the

merits. The substantial rights of the parties are involved in the matter. Therefore, the effective adjudication of suit on merit requires contest and participation of rivals. Further, if the application is rejected and permission to record cross examination of D.W. No. 2 Keshav Balu Nanaware is not granted, plaintiff no.2B will suffer hardship. He will not get the opportunity to defend himself. On the other hand, if the application is allowed, no loss will cause to the defendants. Therefore, to decide controversy between parties completely and to avoid multiplicity of proceedings, plaintiff no.2B needs to be given opportunity to record cross examination of defendant no.1's witness.

5. In view of aforesaid discussions to my opinion plaintiff no.2B needs to be given an opportunity to put forth his defence and the application deserves to be allowed. At the same time the delay and inconvenience caused to the other side is required to be considered and compensated by awarding the cost. Thus, keeping in mind the object of awarding the cost viz. "to compensate and not to punish" the application deserves to be allowed subject to cost of Rs.500/-. Accordingly, I pass following order;

ORDER

Application is allowed subject to cost of Rs. 500/- to be paid by plaintiff no.2B to defendants on or before next date.

Date : 17-10-2025

(V.K. Patil)
Civil Judge (J.D.), Mangalwedha.

CERTIFICATE

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

- (a) Name of the Stenographer : S.M. Gaddam
- (b) Court : Civil Judge Jr. Div.,
Mangalwedha.
- (c) Order signed by P.O. on : 17-10-2025
- (d) Order uploaded on : 17-10-2025