

ORDER BELOW EXH. 59 IN R.C.S. NO. 57/2015

The present application has been filed by defendant no.1 and 3 for allowing them to pay the cost and cross-examine the plaintiff.

[2] Perused the application and say filed by plaintiff. Sum and substance of application is that, they have filed no cross set aside application at Exh. 55 which is allowed subject to cost of Rs. 1000/-. But, due to work they went to other place and failed to pay the cost amount. They are not intentionally avoiding to pay cost amount. If the permission is not granted, they will suffer irreparable loss. Hence, they prayed for allowing them to pay the cost and cross-examine the plaintiff.

[3] Plaintiff has given his say on application itself and prayed for rejecting the application contending that, sufficient opportunities are given to the defendants but they failed to pay the cost. They are negligent and the reasons mentioned in the application are not proper. .

[4] The present suit is filed for specific performance of contract and it is of the year 2015 i.e. more than 8 years old. On perusal of record, it is revealed that, the plaintiff has filed his evidence affidavit on 09/07/2019. But, as plaintiff has not cross-examined, no cross order has been passed against defendants by My Learned Predecessor on 02/11/2019. Further, the said order was set-aside on cost vide application at Exh.55 on 21/03/2022. But, the defendants failed to pay the cost and cross-examine the plaintiff. Therefore, the order has been taken back by Court on 11.10.2022. Thereafter, on 05/08/2023 the defendants have filed the present application for permission to pay the cost of Rs.1000/- and cross-examination of the plaintiff.

[5] Prima-facie, it is revealed that, neither defendants, nor their advocate present before the Court at the time of cross-examination of plaintiff. Hence, no cross set-aside order has been taken back by Court. But, now defendants are ready and willing to pay the cost amount and to cross-examine the plaintiff. If the application is rejected, defendants will be unable to defend themselves. On the other hand, if permission is granted to cross-examine, plaintiff will not suffer any loss

despite delay. Everyone should get the chance to lead his case. In the interest of justice, a fair chance, an opportunity should be given to defendants. But, as it will cause delay in proceeding as well as will cause physical and economic sufferance to plaintiff, some cost should be ordered to compensate the delay caused by defendants. Hence, in the backdrop of above discussion, I proceed to pass the following order :

ORDER

- 1] Application is allowed, subject to cost of Rs. 200/- (Rs. 1000/- of application at Exh.55 + Rs. 200/- of present application). The cost be given to plaintiff till next date.
- 2] Order of no cross will be set-aside, after depositing of costs by defendants (cost of Exh. 55 and 59).
- 3] On depositing cost, defendants will be allowed to cross-examine the plaintiff.
- 4] Both parties to take note of this order and expedite the proceeding of the suit.

Date : 02/09/2023

(Smt. S.N. Gangwal-Shah)
Civil Judge J.D., Mangalwedha.

CERTIFICATE

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

- (a) Name of the Stenographer : S.M. Gaddam
- (b) Name of the Court : C.J..J.D., Mangalwedha, Dist. Solapur,
- (c) Order signed by P.O. on : 02/09/2023
- (d) Order uploaded on : 02/09/2023