

RCS No. 278/2015 - ORDER BELOW EXH.40

Dadasaheb Aaldar Vs. Rajaram Aaldar

This application is filed by defendant seeking permission to comply order passed below Exh.33. He has contended that, below Exh.33 order was passed to set aside No W.S order against defendant. But he failed to pay cost of Rs.400/- to plaintiff. Hence, prayed to grant permission to comply order below Exh.33 and set aside order of No W.S. passed against them.

2. Plaintiff has filed his say over leaf of the application and objected application on the ground that, defendant has failed to pay cost imposed in order to set aside No W.S order passed against him. Suit is for partition and separate possession. Plaintiff has filed his evidence affidavit. Hence, prayed to reject application and alternatively prayed to impose heavy cost.

3. Heard both sides. Record shows that, suit is filed by plaintiff for partition and separate possession. Defendant no.1 has after payment of cost of Rs.400/- order of No WS was set aside below Exh.33 on 07/04/2022. Since then till 01/07/2024 he failed to pay cost. Hence on 01/07/2024 order below Exh.33 was vacated. Today defendant moved application seeking permission to pay cost as per order below Exh.33. Record shows that, plaintiff has filed his evidence affidavit and no cross order is passed against defendant no.1.

Now matter is for further evidence of plaintiff. Due absence of defendant no.1 compliance of order below Exh.33 was prolonged for more than two years. In order to decide matter on merit it is necessary to give chance to defendant no.1 to file his WS on record. But considering delay it is necessary to impose heavy cost upon him. Hence following order :-

ORDER

1. Application of defendant no.1 at Exh.40 is allowed subject to cost of Rs.2000/- to be paid to plaintiff.
2. After obeying above order defendant no.1 is permitted to pay cost of Rs.400/- as per order below Exh33 to plaintiff.
3. After obeying above both orders No WS order passed against defendant no.1 is set aside and his WS on record is read and recorded.

Sangola.
Date:- 13/08/2024

(**Mrs. B. M. Potdar**)
Jt. Civil Judge Jr. Dn.,
Sangola.

