

**Sp. C. S. No. 26/2014**

M/s. Ratan Metals, Thr. its Prop.  
Mr. Vinod Manilal Oswal ----- **Plaintiff**  
V/s.  
M/s. Yash Enterprises Thr. its Prop.  
Mrs. Rekha Hrudaynath Parte & Ors. ----- **Defendants**

**Order Below Exh. 45**

1. The defendant has filed this application for allowing him to deposit the cost of Rs. 300/- as per order passed on Exh. 39.
2. The plaintiff has given say on Exh. 44 and submitted that that say be read for this application. The plaintiff has taken strong objection.
3. Heard both sides at the length.
4. On perusal of record it is seen that, the plaintiff had filed his affidavit of examination in chief on 02/02/2015. The defendant did not take cross-examination of the plaintiff, and so, 'No Cross' order was passed against him on 14/07/2016 on Exh. 26, the affidavit. The defendant filed application at Exh. 39 on 07/08/2016 for setting aside the order of 'No Cross' passed on Exh. 26. That application was decided on merits and the 'No Cross' order was set aside by imposing cost of Rs. 300/- payable to the plaintiff. The order was passed on 07/09/2016. But thereafter the defendant failed to remain present and to take cross-examination by paying costs. The plaintiff closed his evidence. The suit was posted for evidence of the defendant. The defendant failed to lead evidence and so, his evidence was closed.
5. Thereafter, on 06/07/2017 the defendant filed present application for allowing him to deposit cost.

6. The defendant has mentioned reason in the application that the talks of compromise were going on and so, the cost could not be paid within time. Record shows that the suit was sent for mediation from 18/10/2016 to 20/02/2017. But, the mediation was unsuccessful. Present application is filed after five months. The defendant could have paid the cost and taken cross-examination of the plaintiff on next date 19/04/2017. Thus, the defendant showed negligence.

7. The present suit is in respect of recovery of huge amount. The defendant was given enough opportunity. But, considering the nature of suit I think it proper to grant one more and last opportunity to defendant to take cross-examination of the plaintiff, by paying cost ordered on Exh. 39. But, considering the delay caused by the defendant it will be proper to impose additional cost. In the result, I pass the following order.

### **ORDER**

1. The defendant is allowed to pay cost of Rs. 300/- as ordered on Exh. 39, with additional cost of Rs. 500/-, to the plaintiff.

(pronounced in open Court)

Sd/-XX

Dt. 28/07/2017  
Karad.

**(P. A. Savadikar)**  
Civil Judge Sr. Dn. Karad.