

ORDER BELOW EXH.121 IN REG.CIVIL SUIT NO.30/2006

This is an application for setting aside order of 'no cross examination' filed by the defendants.

2. The facts of the application in brief are that, on 8-7-2009 the plaintiff had filed his affidavit of examination in chief on 13-10-2009. The defendants have partly cross examined the plaintiff. On 11-3-2010 the matter was adjourned. On 15-4-2010 the plaintiff had filed an application for adjournment at Exh.101. On 5-7-2010 the matter was fixed for further cross examination. On the said day it was 'Bharat Band'. As all the advocates were supporting to it, the learned counsel of the defendants was not present in the court. At about 1,30 p.m. the matter was called for. The defendant No.10 was present but inadvertently he could not mention before the court that he would place on record an application for adjournment. The defendant No.10 went on feet in the court of Civil Judge, Junior Division and he had brought an application from the clerk of the learned counsel. Till then the court had passed the order of 'no cross examination'. Neither the defendants nor the learned counsel were having knowledge about the matter. The application filed by the defendants at Exh.102 was simply exhibited by the court and it was

filed. This fact was also not known either to the defendants or their learned counsel.

3. On 15-7-2010 the plaintiffs filed an application at Exh.119 seeking for adjournment. The matter was fixed on 5-8-2010 but as the Presiding Officer was retired, the matter was taken up for hearing on 20-9-2010. On that day, the defendants have placed on record a pursis at Exh.103 informing that defendant No.3 had died. Since 13-10-2010 till 14-12-2010 the proceedings on the application filed by the plaintiff were in progress which was in respect of amendment.

4. Though the legal heirs of defendant No.9 have not placed on record their written statement, yet they are having every right to cross examine on legal aspect. The order of 'no cross examination' passed on 5-7-2010 is prior to the appearance of defendant Nos.9A, 9B & 9C. On 23-6-2011 the learned counsel for the defendant came to know that the matter was fixed for evidence of defendant and the plaintiff had filed evidence close pursis at Exh.120. As the proceedings in respect of bringing on record legal heirs of defendant No.9 was in progress, the defendants could not seek for setting aside the order of 'no cross examination'. It is necessary for the defendants to cross examine the plaintiff. The defendants are ready to conduct the matter day-to-day. Hence it is prayed to allow the application and to set aside the order of 'no cross

examination'. The application is supported with an affidavit at Exh.122.

5. The plaintiffs have filed their say contending that the application is false. The order of 'no cross examination' was passed on 5-7-2010 i.e. prior to one year. The defendants are having knowledge about the same. The defendants have not cross examined the plaintiff only to cause delay. There is no sufficient reason to set aside the order of 'no cross examination'. However, the plaintiffs have prayed to award cost of Rs.2000/- in the event if the application is allowed.

6. Perused the application and say. Heard both the sides. In view of the facts on record it appears that, the order of 'no cross examination' was passed on 5-7-2010. The plaintiffs came to know about death of defendant No.9 from pursis on record. The legal heirs of deceased defendant No.9 were allowed to be brought on record on 20-12-2010. However, it appears that the defendant No.9 died on 6-3-2008 and the order of 'no cross examination' was passed on 5-7-2010. But the legal heirs of deceased defendant No.9 were brought on record in the month of December 2010. The legal heirs of deceased defendant No.9 have been stepped into the shoes of their deceased father and they would be responsible for the acts of defendant No.9. The learned counsel Shri.S.R.Nikam has submitted that, the order of 'no cross examination' has been passed prior to the

appearance of the legal heirs of defendant No.9. As such, the order is not binding upon them. However, I am of the view that, it is not so and they are liable for the consequences of the acts done by defendant No.9. Moreover, the order of 'no cross examination' has been passed against the defendant Nos.3 to 8, 9A, 9B, 9C(1), (2) to 11, 12A, 12B, 12C, 13, 14A & 16. Also it is to be considered that, the present application is placed on record on 7-7-2011 i.e. after a period of one year.

7. In view of the discussion made above It appears that, the defendants have caused delay of one year in filing the instant application. However, with a view to adjudicate the dispute on merit and by providing each & every opportunity to both the sides, the defendants are entitled to cross examine the plaintiff. But at the same time the plaintiffs are also entitled to be compensated for the delay caused.

8. In the conclusion, the application of the defendants is allowed and the order of 'no cross examination' passed against them is hereby set aside subject to cost of Rs.1000/- which is to be deposited within 15 days from the date of order.

(S.K.CHODANTE)

Dated: 16-9-2011. Jt.Civil Judge, Sr.Dn., Karad.