

ORDER BELOW EXH.112

The defendant No. 33 filed the application for setting aside 'No Cross Order' passed below Exh. 100 and Exh. 105 dated 15/03/2019 and 07/07/2022 respectively. The application is supported by affidavit. Say of the plaintiff was called thereon.

2) Ld. Adv. Shri. A.S.Mane for defendant No. 33 has submitted that, due to service, death of child of defendant No. 33, due to sorrow, due to COVID-19 pandemic and other reasons, the defendant No. 33 was unable to remain present in the Court and unable to cross examine the plaintiff witnesses. Therefore, no cross order was passed by this Court. In order to decide the suit on its merits and in the interest of the justice, the application may be allowed.

3) Ld. Adv. Shri. P.K.Gaikwad for plaintiff has submitted that, reasons in the application are false and not justifiable. Defendant No. 33 was discharging official duties and was taking responsibilities of his family. He could have proceeded with the suit through his counsel. The defendant No. 33 deliberately remained absent and prolonged the proceeding. Even, initially, he caused huge delay in filing written statement. Despite opportunities being given, he deliberately prolonged the suit. With this application he is trying to prolong the suit. It caused prejudice to the plaintiff. Hence, he prayed to reject the application. Alternatively, he prayed to impose costs of Rs. 10,000/-, if the application is allowed.

4) Perused the application, say and record. Heard both sides. Undisputedly, 'no cross' order were passed against defendants below Exh. 100 and 105. Thereafter, the plaintiff closed his evidence. Later on, evidence of defendants was closed. At the stage of arguments, the defendant No. 33 moved this application.

5) Through this application, the defendant No.33 has shown willingness to conduct the cross-examination of the plaintiff witnesses.

Therefore, though, no cross order is passed but, this being a Trial Court, an opportunity is required to be given to the defendant No.33 for bringing out his defence and for deciding the suit on its merits. If, the application is allowed then no prejudice would be caused to the plaintiffs. Whereas, if, the application is rejected then, the defendant No.33 would certainly prevent, from bringing out his case. But, as stated above, the defendant No.33 has caused delay. Therefore, said delay has to be compensated by imposing necessary costs. Thus, the application is required to be allowed subject to costs of Rs.1,200/-, which appears to be reasonable, considering the facts of the case. The suit is old one. Therefore, the defendant No. 33 is required to be directed to proceed with trial of the suit expeditiously. Hence, following order is passed.

ORDER

- i) The application (Exh.112) is allowed subject to costs of Rs.1,200/- to be paid to the plaintiff by the defendant No.33 on or before next date.
- ii) The defendant No. 33 shall cross-examine the plaintiff witnesses on next date, otherwise necessary orders would be passed in accordance with law.
- iii) The defendant No. 33 shall expediate trial of the suit.

Date :- 17/10/2023.

(P. S. Girgaonkar)
Civil Judge (Jr. Div.)
Patan.