

R.C.S. No. 58/2009
(CNR No. MHST13-000548-2009)

Order Below Exh. 109

01. This is an application moved by the defendants for setting aside evidence closed order.

02. It is contended by defendants that, due their personal problems they failed to present before the Court and also failed to face cross examination due to which the evidence closed order has been passed against them. If said evidence closed order is not set aside then the defendants would lose their valuable right to defend the suit. On the contrary, if defendants permitted to adduce evidence, it would assist the Court in delivery of justice and no prejudice would be caused to the plaintiffs. On all these grounds the defendants prayed for allowing this application.

03. The application has been resisted by the plaintiffs by filing say on the leaf of the application. The plaintiffs have denied the reason for delay as not true and satisfactory. Therefore, the application be rejected or else if it is to be allowed it may be allowed with heavy costs of Rs.2,000/-.

04. Heard both learned advocates and gone through the record of proceeding. The application under consideration is supported by an affidavit. It is basic principle of law that, no one should be condemned unheard. So it will be proper to decide it on merit after giving opportunity of hearing to both sides. It will also help the Court to avoid multiplicity of litigation. The defendants claims that, due their personal problems they failed to present before the Court and also failed to face cross examination. To permit defendants to adduce their evidence would assist this Court to come to right conclusion.

05. In view of principles natural justice and to decide the matter on merit, defendants are required to be given an opportunity to

examine themselves and face cross examination. The procedural bottlenecks should not be allowed to come in the way of substantial justice. The plaintiffs can be compensated by imposing cost on the defendants. Hence, in the result I pass following order:-

ORDER

'Evidence closed' order passed against defendants is hereby set aside subject to costs of Rs.500/-.

Date :30.08.2019.

(P.S.Patil)
Civil Judge, J.D.,
Patan