

MHST160013102018

**ORDER BELOW EXH.65 IN R.C.S. NO. 87/2018**

(Sanjeev Rajanprasad Shrivastav Vs.
The Head HR Garware Wall Ropes Ltd
Puner)

Present application has been filed by defendant for setting aside “No cross” order passed against him.

2] According to defendant, plaintiff has filed present suit for mandatory injunction against them. The defendants have filed their written statement at exh.14. The plaintiff has filed his chief affidavit on 26.02.2021 below exh.29. On 8.10.2021 plaintiff examined himself and documents at Sr.No.1 to 10 along with list exh.4 were exhibited. The plaint was thereafter amended on account of change in name of the Company. The learned advocate appearing on behalf of defendants was unable to attend the matter for long time and ultimately withdrew himself from the matter. Therefore no-cross order was passed on 15.09.2023. Defendant had appeared through new advocate on 12.01.2024 and filed application for amendment of written statement on 13.02.2024 below exh.48. This application was rejected on 23.04.2024.

3] Defendants further submitted that defendant has filed review application of the said order but said application is again rejected on 18.10.2024 and matter has to proceed on merits. The defendant therefore prays for an opportunity to cross-examine the plaintiff and contest the matter on merits. If the order dated 15.09.2023 is not set aside, the defendant shall suffer irreparable loss. The plaintiff will not suffer any harm if the defendant is allowed to cross-examine him. Therefore, “No cross” order passed against him be set aside.

4] Plaintiff has filed his at exh.70 and submitted that the application is false, illegal and incorrect. The contents of the application are general in nature. Reasons mentioned in the application are not just and proper. The defendants have tried to put blame upon their earlier advocate. However, this is not permissible in law. The defendants have deliberately caused delay in proceeding with the matter. Plaintiff has caused immense suffering who has to travel from Pune for this matter. The application may be rejected with cost.

5] Heard both advocates. Perused record and proceeding.

6] On perusal of record it appears that plaintiff has filed his chief affidavit at exh.29 on 26.02.2021. On 08.10.2021 defendant and his advocate are absent to cross-examine the witness. Therefore cross-examination of plaintiff was adjourned till next date. On 18.08.2023 defendant and his advocate are absent. Hence no cross order is passed. Present application is filed on 15.11.2024.

7] The Hon'ble Supreme Court as well as Hon'ble Bombay High Court has taken the lenient view while setting aside such orders on the principle that opportunity of cross-examination should be given to the defendant. Considering, the nature of suit as well as defence raised in the application, an opportunity of cross-examination of plaintiff's witness is necessary to be given to defendant by setting aside order of "No cross" passed against him. At the same time, considering the delay cost needs to be imposed upon defendant. Resultantly, I proceed to pass the following order-

ORDER

1. Application is allowed.

2. “No cross” order passed against the defendant is hereby set aside subject to the cost of Rs.2000/- (Rupees Two Thousand only) payable to the plaintiff.
3. After payment of costs amount defendant is allowed to take the cross-examination of P.W.1.

Date : 26/11/2024

(S.S. Palsule)
3rd Jt. Civil Judge, Jr.Dn., Wai.