

Order Below Exh. 34.

(Passed on. 28.02.2023)

This is an application filed by the defendant for setting aside no evidence and evidence close order passed against her on 27.09.2021 and 12.07.2022. By filing this application defendant has prayed for setting aside the order and sought permission for cross-examination to plaintiff witnesses.

2. Defendant submitted that, due to the family medical problems, the earlier Counsel of the defendant was unable to attend the Court and carry out the cross-examination of the plaintiff witnesses. He also failed to lead evidence on behalf of defendant. This is the circumstances beyond the hands of defendant. He prayed for to allowed her to cross-examination of the witnesses by setting aside no cross order.

3. The reply of plaintiff on this application was called on, he submitted that, the case is 5 years old no cross order was passed on 27.09.2021. The defendant has not filed any supporting document regarding the medical proof. Heavy prejudice will be caused if the application is allowed. Hence he prayed for reject the application.

4. Heard the counsel for plaintiff and defendant. They reiterated the contents of her application and say. On perusal of record, it is seen that no cross order was passed on 27.09.2021 and 12.07.2022 since then the defendant has not filed any application for setting aside no evidence order till today.

5. Now the case is fixed for argument. At this stage this application has been moved by defendant for grant her sufficient opportunity to cross-examine the plaintiff's witnesses. To prove the reason mentioned in the

application for setting aside no evidence order, it is need to be proved by the defendant that, there was a good caused for not getting cross-examined to the plaintiff witnesses. Though, it is the fault of defendant Counsel but she has not filed any supporting documents to show that her Counsel was engaged in his family medical problems.

6. The record apparently seen that, there is substantial delay for filing this application to set aside no cross order. However, though the case is fixed for argument, without giving proper oppotunity to the defendant to bring to real facts on record. It will be unjust and heavy prejudice will be costs to the defendent. Therefore it would be imperative to imposed costs to the defendant payable to the plaintiff for the delay occasioned as a pre-condition for cross examine the witness and to lead evidence. The defendant has not filed any supporting documents to show good cause for the delay. However, in the suit, the valuable right as to immovable property are involved. If the present application is rejected, then possibility of multiplicity of the proceeding cannot be ruled out. It is also desirable to decide the case on merit after giving every opportunity to both the sides. If the present application is allowed, then no prejudice would be cause to the plaintiff. Under such set of circumstances, in my considered view, it is just and proper to allow the present application with heavy costs. Hence, I pass the following order.

Order

1. The application is allowed
2. The order of No evidence dated 27.09.2021 and 12.07.2022 are set aside subject to costs of Rs 2000/-(two thousand Rupees.) to be paid to the plaintiff and after payment of costs the defendant are

allowed to cross- examine the plaintiff's witnesses and permitted to lead evidences if any on her behalf.

Dt. 28.02.2023

(S.W.Shegokar)
Jt. Civil Judge Jr.Division, Seloo