

Order Below Exh.64**(Passed on. 20.12.2024)**

This is an application filed by the defendant for setting aside no cross order passed on 15.07.2024 and 08.11.2024. By filing this application defendant has prayed for setting aside the order and sought permission to cross-examination of PW-1 and PW-3.

2. Defendant submitted that the mobile of defendant was stolen due to which the Counsel could not convey the date to the defendant. Due to which no cross order has been passed against defendant No.1. The defendant is ready to proceed with the case. He has good case on merit. Therefore, the permission to cross-examine the witness is necessary in the interest of justice. The Counsel for defendant No.1 submitted that the reason was just and beyond the control of Counsel. Hence, he submitted that there is no deliberate avoidance and prayed to set aside no cross order.

3. The reply of plaintiff on this application was called upon, he resisted the application and prayed to reject with costs.

4. Heard the Counsel for plaintiff and defendant. They reiterated the contents of their submission. On perusal of record, it appears that after recording the examination-in-chief the case was adjourned on various dates. Thereafter, instant application moved by the defendant on 20.12.2024.

5. The instant application moved by defendant for grant him one more opportunity to cross-examine the plaintiff's witnesses.

To prove the reason mentioned in the application for setting aside no cross order, it is need to be proved by the defendant that, there was a good caused for not getting cross-examined to the plaintiff witness on previous date. The reason mentioned in the application seen to be beyond the control of Counsel.

6. Considering the facts of the case, no hardship would caused to the plaintiff if the application allowed and one chance granted to the defendant to cross examined. It will be unjust and heavy prejudice will be caused to the defendant if the application rejected. However, for the cause of delay, 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. 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 costs. Hence, I pass the following order.

ORDER

1. The application is allowed
2. The no cross order dated 15.07.2024 and 08.11.2024 of PW-1 and PW-2 are hereby set aside subject to costs of Rs 1,000/-

(One thousand Rupees), costs be paid to the plaintiff and after payment of costs, defendant is allowed to cross-examine the plaintiff's witness.

Dt.20.12.2024

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