

Order Below Exh. 41.

(Passed on. 09.01.2024)

This is an application filed by the defendant for setting aside no cross passed on 20.11.2023. By filing this application defendant has prayed for setting aside the order and sought permission to cross-examination of PW-1.

2. Defendant submitted that mother of Counsel for defendant was suffering from illness on previous date. Therefore, the Counsel could not attend on the fixed day. Due to which the cross-examination of PW-1 had not been taken. The reason mentioned above is 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 strongly opposed the application and submitted that the evidence filed on 28.03.2023 and verification conducted on 24.07.2023. Thereafter, sufficient opportunity was offered to the defendant. However, he failed to cross-examine the witness. Hence, he prayed to reject the application and alternatively. He further prayed that if the application is allowed heavy costs may be imposed upon defendant.

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 18.08.2023, 05.09.2023, 09.10.2023, 25.10.2023 and 20.11.2023. Thereafter, no cross order has been passed.

5. The instant application moved by defendant for grant them 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 cause for not getting cross-examined to the plaintiff witness on previous date. The reason mentioned in the application is not concerned with the defendants. The fault of Counsel can not be goes against the right of defendant. Non-present of Counsel is not control by the parties. However, the Counsel has mentioned personal difficulties in the present application.

6. Considering the facts of the case, no hardship would be caused to the plaintiff if the application allowed and one chance granted to the defendant to cross examine. It will be unjust and heavy prejudice will be caused to the defendant if the application is rejected. On the contrary, no prejudice or loss would be caused to the plaintiff. For the cause of delay, it would be imperative to impose 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 heavy costs. Hence, I pass the following order.

Order

1. The application is allowed
2. The order of No cross dated 20.11.2023 is set aside subject to costs of Rs 1,000/- (One thousand Rupees.) to be paid to the plaintiff and after payment of costs the defendant are allowed to cross-examine the plaintiff's witnesses.

Dt. 09.01.2024

(S.W.Shegokar)

Jt. Civil Judge Jr.Division, Seloo