

**Order Below Exh.59****(Passed on. 17.03.2025)**

This is an application filed by the defendant for setting aside no further cross order passed on 21.01.2025. 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 due to unavoidable circumstances, he and his Counsel could not appeared on the fist session on the day of order. Therefore, the impugned order has been passed against him and his right to cross-examination has dispensed with. He further submitted that his ready to cross-examine the witness. If the permission refused to him then irreparable loss will be caused to the defendant and facts will not bring on the record. Therefore, he prayed to set aside the order dated 21.01.2025.

3. The reply of plaintiff on this application was called upon, he resisted the application and prayed to reject with costs. The counsel for plaintiff further submitted that he proper opportunity is already granted to the defendant at several time. However, he failed to cross-examine the witness. He deliberately avoided only to prolong the case.

4. Heard the Counsel for plaintiff and defendant. They reiterated the contents of their submission. On perusal of record, it appears that the defendant has taken some cross-examination of the witness and during cross-examination, he adjourned the case on 16.04.2024, 08.08.2024 and 19.12.2024. Despite grant of

opportunity, he failed to cross-examine the witness on 06.01.2025 and 21.01.2025. The defendant and his Counsel was absent due to which the no cross order was passed against them.

5. The instant application moved by defendant for grant him one more opportunity to cross-examined 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's witness on previous date. The reason mentioned in the application is nothing but evasive and unsatisfactory.

6. However, only for grant of fair opportunity and for the fair trial, it needs to grant him a last chance to cross-examine the plaintiff's witness. 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 the witness. 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 precondition 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 21.02.2025 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.
3. The plaintiff is directed to remain present the witness and defendant is directed to take cross-examination of the witness as early as possible.

Dt.17.03.2025

(S.W.Shegokar)

Jt. Civil Judge Jr.Division, Seloo