

R.C.S. No.54/2017

Shobha Vs. Devendra

(CNR No.MHWR05-001696-2017)

ORDER BELOW EXH.74

The defendant no.1 has filed this application for setting aside the no cross order passed against him.

2. He submitted that the learned advocate of the defendant no.1 was present in the first session when the witnesses were examined but the witnesses remained present in the second session and therefore no cross order is passed against the defendant no.1. Hence, he wants to set aside no cross order passed against him on Exh.33 and 67.

3. Called say of plaintiff. She filed say that more than two years lapsed for no-cross order passed against the defendant below Exh.33. No satisfactory reason is given for default of the defendant no.1 to cross-examine the witnesses. The defendant no.1 is deliberately appearing at belated stage and filed application to prolong the matter and heavy costs be imposed if the application is allowed.

4. Heard both sides. Perused the application and say. No reason is given by the defendant no.1 for his failure to cross-examine plaintiff when no-cross order is passed against him. In the present application the learned advocate of the plaintiff was present in the first session and the witness was examined in the second session is

not a proper ground to overthrow his responsibility towards his client. On 28-08-2019 plaintiff was examined. On 27-11-2019 no cross order is passed against defendant no.1. On 07-12-2021 learned advocate for defendant no.1 was absent for cross-examination. From perusal of roznama, it appears that the defendant is not diligent in proceeding with the case. The present application is without any cogent reason. But the rule of natural justice requires that other party should get opportunity to put his stand. But at the same time, it should be born in mind that indifferent attitude towards the proceeding by defendant no.1 and his advocate shows that they are interested in prolonging the matter. In order to curb such tendency following order will serve the ends of justice. Hence, I proceed to pass order.

ORDER

1. Application is allowed subject to cost of Rs.3,000 (Rs. Three thousand only) to be paid to plaintiff till 20-04-2022.
2. Defendant no.1 is allowed to cross-examine witness no.2 of plaintiff subject to costs of Rs.1000/- to be paid to the witness.
3. Plaintiff shall keep herself present for cross-examination and defendant no.1 shall take every effort to keep witness no.2 Ku.Priti Vinayak Mohare, Talathi Ubda present before the Court and cross-examination of both witnesses be carried out till 30-06-2022.
4. If the defendant fails to comply with the above clause 1 to 3, order shall stand automatically vacated and written statement filed by the defendant no.1 shall stand struck out.

Samudrapur
Dt.06.04.2022

(P.B.Warade)
Jt. Civil Judge, Jr. Dn.,
Samudrapur

