

MHWS070017222015

RCS No. 67/2015
Rahul Totala Vs. Raju Raut



ORDER BELOW EXH.64.

This application has been filed on behalf of defendant Nos.1 to 4, thereby seeking setting aside the order of ‘no cross-examination of plaintiff’ dated 10/04/2023 passed against them.

2] It is submitted that on the date of passing of impugned order, learned advocate for defendant Nos.1 to 4 had been out of station to Nagpur. As such, he was not feeling well. Therefore, he could not remain present before the court to cross-examine the plaintiff. Consequently, the impugned order came to be passed against defendant No.1 to 4. It is further submitted that the defendants are intending to cross-examine the plaintiff in order to examine the veracity of the plaintiff and to establish their defence. Therefore, it is expedient to set aside the impugned order. The same will not cause any prejudice to the plaintiff. On the other hand, if the impugned order is not set aside, then it would cause prejudice to the right of cross-examination of defendant Nos.1 to 4. Hence, this application. The application is supported by an affidavit.

3] On the contrary, this application came to be strongly resisted by the plaintiff by filing his say below application itself. The learned advocate for the plaintiff has contended that even earstwhile on 08/11/2019 the same order was passed against defendant Nos.1 to 4, which was also got set aside by the defendants in view of the order passed below Exh.61 on

17/01/2020. Even thereafter, the defendant Nos. 1 to 4 had not cross-examine the plaintiff. As such, they remained continuously absent on the dates of proceedings.

4] Learned advocate for the plaintiff has drawn my attention towards the fact that though the impugned order had been passed on 10/04/2023, this application has been belatedly filed today by the defendants which clearly shows the lethargic conduct of defendants, as they are interested to prolong the matter deliberately.

5] It is further contended that, there are no sufficient reasons mentioned in the application for the absence of parties and their learned advocate on the date of impugned order. As such, no application of adjournment was filed on that day. Therefore, it is contended that the present application is nothing but an attempt to kill the time of the court. Therefore, prayed to reject the application with heavy costs.

6] Heard both sides. Perused the application, say and I have also gone through the record.

7] This is an old matter, wherein issues were framed on 15/09/2017 and the plaintiff stepped in the witness box for his examination-in-chief on 20/07/2018 as depicted from the record. The record further shows that the matter was adjourned for the cross-examination of the plaintiff in view of the request of the learned advocate of the defendant Nos.1 to 4. However, it further appears that till 08/11/2019 defendants No.1 to 4 did not bother to cross-examine the plaintiff. Therefore, the learned predecessor had passed order of closure of cross-examination of plaintiff. However, the said order was subsequently got set aside by the defendant No.1 to 4 and by order dated 17/01/2020 subject to costs of Rs.500/-.

8] Record further reveals that the matter was continuously adjourned for the cross-examination of plaintiff by defendant Nos.1 to 4. However, his cross-examination was not done despite of ample opportunities given to defendants. Lastly, on 10/04/2023 the impugned order came to be passed against defendant Nos.1 to 4.

9] Record depicts that an ample opportunities have already been granted to defendant Nos.1 to 4 for cross-examination of the plaintiff, but the same were not availed of for the reasons better known to the defendants only. The conduct of defendant Nos.1 to 4 disentitle them to be shown further leniency by this court. But, today defendants have shown their readiness to cross-examine the plaintiff. Admittedly, in order to adjudicate the matter on merit at once, it is necessary that defendants should be given one last opportunity. However, looking to their past conduct and inconvenience which is caused to the plaintiff, they are liable to be saddled with suitable costs. Therefore, to secure the end of justice, I am inclined to grant this application. However, subject to costs. Hence, I proceed to pass following order.

ORDER

1. Application Exh.64 is allowed subject to costs of Rs.1,000/- (Rupees One Thousand Only) be paid to the plaintiff.
2. The order dated 10/04/2023 passed against defendants is hereby set aside.
3. Parties to note and comply accordingly.

Date :- 15/09/2023.

(**M.H. Haque**)
Jt. Civil Judge Junior Division,

Karanja (Lad).

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/
Order are same word to word as per the original order.

Name of Steno. :- D. V. Daware (Stenographer-3)

Court Name :- Jt. Civil Judge (Jr.Dn.) and
J.M.F.C., Karanja. Dist. Washim.

Date :- 15/09/2023

Order signed by the :- 15/09/2023
presiding officer on

Order uploaded on :- 15/09/2023