

ORDER BELOW EXHIBIT 36 IN RCS No.77/2017

1. This is an application moved by defendants seeking setting aside order of 'No Cross-examination' dated 23/06/2023 passed against them. Application is not supported by an affidavit.

2. It is submitted that, on 23/06/2023 the matter was posted for cross-examination of the PW-1. However, neither defendants nor learned advocate for the defendants were present in the Court. As such, defendants were not feeling well. Therefore, 'No Cross-examination' order came to be passed against defendants below Exh.1.

3. It is further submitted that it is necessary to conduct the cross-examination of the PW-1 for the adjudication of matter on merit. It would not cause any prejudice to the plaintiff if present application to be allowed. On the other hand, defendants would suffer an irreparable loss if they have been denied the opportunity to cross-examine PW-1. Thus, it is prayed to set aside 'No Cross-examination' order passed against the defendants.

4. Application has been resisted by plaintiffs by filing say on the backside of the application. It is contended that, sufficient opportunity of cross-examination has been afforded to defendants. However, same has not been availed of by them. Therefore, they should face the music. Plaintiffs also blamed that defendants have deliberately not cross-examined PW-1 in order to cause delay in the trial. Finally, it is prayed that, application be rejected with heavy costs.

5. I have perused the application and say and gone through rival submission. On perusal of the record, it is seen that, suit is more than five-year-old and has been pending for the evidence of plaintiffs. Wherein,

affidavit in lieu of examination in chief on behalf of PW-1 Bhagwan Mukaji Lokhande was filed on 13/10/2021 and examination in chief of PW-1 was recorded on 10/02/2023 and cross-examination was deferred till next date due to absent of defendants and their advocate. Record further reveals that thereafter matter was adjourned from time to time for the same purpose. But cross-examination of PW-1 was not conducted by defendants.

6. Thereafter, on 23/06/2023 when matter was listed for cross-examination of PW-1 neither defendants nor their learned advocate was present in the Court despite repeated call. So also, no application seeking time to conduct cross-examination was filed on record. Therefore, this Court after perusal of record was constrained to pass No Cross-examination order on same day below Exh.1.

7. Thus, it appears that defendants have not been diligent enough to proceed with matter. However, in my considered view, in order to prevent multiplicity of litigation and to decide the matter at once on merit an opportunity should be given to defendants to cross-examine PW-1. However, at the same time the inconvenience caused to the plaintiffs is required to be reasonably compensated. Thus, I pass following order-

ORDER

1. Application (Exh.36) is allowed subject to costs of Rs.700/- (Seven Hundred Rupees only).
2. 'No Cross-examination' order dated 23/06/2023 is hereby set aside.

Date:- 18.08.2023

(M. H. Haque)
Jt. Civil Judge Jr. Division,
Karanja-Lad