

Common Order Passed Below Exh. No. 1 and Counter Claim
below Exh. 42 in R.C.S. No. 31/2008

(Passed on 19th June 2018)

CNR No.MHWS090000072007

1. Perused record of the case. It goes to show that, matter is pending since the year 2008. Record further show that, previously the original suit was dismissed for default on 17.04.2018. Thereafter, matter was kept for evidence of the counter-claimant. However, the counter claimant was remaining absent. Previously even no applications for adjournment was filed on record. Matter is held up due to absency of the counter-claimant. It shows that he has lost the interest in the present matter. Hence, order below Exh.1 was passed on 24.04.2018 and the counter-claimant was directed to appear and to adduce evidence. However, he failed to do so.

2. Today also the counter-claimant is absent. His advocate filed application vide Exh. 52 which was rejected on merit. No purpose will suffice by giving adjournments. Attention of the parties are drawn towards Order-XVII of the Civil Procedure Code. For reference Rule-3 of Order-XVII are taken into consideration.

3. Rule-3 provides that, “ where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may notwithstanding such default: (a) if the parties are present, proceed to decide the suit forthwith; or (b) if the parties, or any of them is, absent, proceed under Rule- 2 ”.

4. Rule-3 is very clear. So far as facts and circumstances of this case is concerned, already adjournments have been granted on court motion. Moreover, the Counter-claimant was directed to remain present and to proceed with the matter. In-spite of that, the counter-claimant did not comply the direction. To me, it is a failure to do the act directed by the court. The act of the Counter-claimant i.e. to lead evidence is must and necessary for further progress of his suit. The Counter-claimant failed to appear and to comply the direction. Therefore, as per Rule-2 of above order, I have to take recourse of the rules prescribed by Order-IX of Civil Procedure Code.

5. Therefore, in view of above facts and circumstances, the Counter-claim is liable to be dismissed for want of prosecution. Thus, I pass the following order.

O R D E R.

- 1 The counter-claim is dismissed for default to adduce evidence and thus for want of prosecution.
- 2 Already the original suit was dismissed on 17-04-2018. Therefore, the whole proceeding is hereby closed.

Date:- 19.06.2018.

(R.M. Shaikh)
2nd Civil Judge Junior Division,
Manora.

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 Clerk. :- A. S. Bhojapure, Junior Clerk

Court Name :- 2nd Jt. Civil Judge (Jr.Dn.) and
J.M.F.C., Manora. Dist. Washim.

Date :- 19/06/2018

Order signed by the :- 19/06/2018
presiding officer on

Order uploaded on :- 20/06/2018