

MHYA210024172019



ORDER BELOW EXH.43 IN P.W.D.VA. No.46/2019
Suvarna Nandkishor Jivtode Vs. Nandkishor
Ramkrushna Jivtode

1. The present application is filed by non-applicant No.1 for setting aside evidence filed order dated 08/05/2025 passed below Exh.40.

2. Perused the application. Non-applicant No.1 contended that, he has filed his evidence affidavit on 12/09/2023. Thereafter, the matter was posted for his cross-examination. However, on the day of cross-examination, health of non-applicant No.1 was not good. Therefore, he could not appear before the Court. Therefore, on 08/05/2025, this Court filed evidence affidavit of non-applicant No.1 with record. Now, non-applicant No.1 is ready for cross-examination. Lastly, he prayed to allow the application.

3. The applicant filed reply and strongly opposed the application. She contended that, non-applicant No.1 has not paid interim maintenance amount. An amount of Rs.3,60,000/- is due towards non-applicant No.1. Therefore, non-applicant No.1 is directed to pay the said amount. Lastly, she prayed to reject the application.

4. Heard, both the learned Advocates for non-applicant No.1 and applicant. They submitted the averments and contentions of application and reply. Perused the application and record. The present application is filed under P.W.D.V. Act. Non-applicant No.1 filed his evidence vide Exh.40. Thereafter, he failed

to appear before the Court. Therefore, on 08/05/2025, this Court has passed order and filed said evidence affidavit with record.

5. Now, non-applicant No.1 is appeared before the Court and prayed for setting aside evidence affidavit filed order below Exh.40. It is pertinent to note that, non-applicant No.1 is ready for cross-examination. Needless to say that, the cross examination is a valuable right available to non-applicant No.1. In the instant case, the cross-examination of non-applicant No.1 is necessary to test his veracity. Further, it also essential to make out the defence of the non-applicants. In such circumstances, if application is rejected, non-applicant No.1 will be deprived of his valuable right. On the contrary, if the application is allowed, no prejudice will be caused to the applicant. However, considering the conduct of non-applicant No.1, it is appropriate to saddle costs on him. Hence, in view of the above findings, I pass following the order,

ORDER

1. The application is allowed subject to costs of Rs.1,000/- (Rs. One Thousand only) to be paid to the applicant.
2. On payment of aforesaid costs amount, the order of filing of evidence affidavit dated 08/05/2025 is set aside and non-applicant No.1 is permitted to cross-examined by the applicant.
3. Non-applicant No.1 is directed to remain present on next date and the applicant is directed to cross-examine non-applicant No.1 without fail.

Place :Wani
Date :29/09/2025.

(Shahaji D. Bhosale)
Judicial Magistrate First Class, Wani.

I, Abhay Pramod Bhoyar, Stenographer of (J.M.F.C. Wani) affirm that, the contents of this PDF are same words for words, as per the original order.