

IN THE COURT OF SMALL CAUSES AT MUMBAI**ORDER BELOW EXHIBIT 37****IN****R.A.E. SUIT NO.1455 OF 2015
(CNR : MHSCA2-002550-2015)**

Mrs. Shamsi Malek Malekpur

... Plaintiff

v/s

Pems Investment Pvt. Ltd.

... Defendant

**Coram : K. M. Jaisingani,
Judge, C. R. No.15,
Date : 08.01.2019****ORAL ORDER :**

1. The defendant has filed this application for setting aside no say order dated 16.10.2018 passed below Exh.35.
2. The application is opposed by plaintiff by reply Exh.38.
3. Heard both sides.
4. The plaintiff has filed application Exh.35 for passing decree on admission. In spite of sufficient opportunity, the defendant did not give reply to that application. Therefore, by order dated 16.10.2018, the application was proceeded without reply of defendant. Now, the defendant has prayed to set aside order dated 16.10.2018 by which application Exh.35 is proceed without reply against the defendant. The

defendant has submitted that on 16.08.2018 he has collected copy of application Exh.35. Thereafter, time to time, the matter adjourned. On 19.09.2018, the Court was vacant. The reply of defendant was ready and he could not file reply as the Court was vacant. Therefore, the matter was adjourned to 16.10.2018. On that day, the defendant and his advocate was present. They were under impression that they have already filed reply to application Exh.35. But, the reply was not on record. Therefore, the application Exh.35 was proceed against him without reply. The application is opposed by plaintiff by submitting that the defendant is time to time moving applications of such nature for delaying the hearing of suit. The application is also opposed on the ground that there are no sufficient grounds for setting aside no reply order as prayed for. Upon hearing both sides and perusing the entire record, I find that the defendant has deliberately avoided to file reply within the time granted to him. But, the plaintiff has filed application for passing decree on admission. I find it proper to give opportunity to defendant to file reply on that application. Looking to conduct of defendant, I find it proper to impose heavy costs on the defendant. Therefore, I pass following order :

ORDER

1. The application is allowed.
2. The reply of defendant to application Exh.35 is taken on record on payment of costs of Rs.3,000/- payable to plaintiff within 10 days from the order.

3. Both the parties to argue application Exh.35 on next date without fail.

(K. M. Jaisingani)
Judge, C.R.No.15
08.01.2019

Dictated on : 08.01.2019
Transcribed on : 08.01.2019
Checked & signed on : 09.01.2019