

06-03-2020

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R:

for Orders,

ORDER ON I.As. U/O 18 RULE 17 and
Sec.151 OF C.P.C

These applications are filed by the respondent counsel and prays for reopen the case and re-call the PW-1 for cross examination.

2. In support of the applications, the Counsel for the Respondent has filed the Memorandum of facts stating that, the Respondent is suffering from serious heart ailment and she was also admitted in FORTIS Hospital and undergone Angioplasty surgery and also recent she had suffered a severe stroke and mental shock and she is taking treatment. Hence, the doctor advised to take bed rest. Even on the last hearing the date also they have filed an application for adjournment of the above case but this court has refused to grant the time and

posted the above casefor argument. Further the Respondent is having her sons marriage as such she was not in a position to appear before the court. Hence, on the last of hearing dates the Respondent was absence and not Cross examined the PW.1 was not intentional or willful. Hence, with other contentions prays for allow the application and re-opened the case and re-call the Pw.1 for cross examination.

3. The counsel of the petitioner has filed objection contending that the application is not maintainable either in law and on facts of the case. Further stating that, the Respondent has not produced any medical certificate nor mentioned the dates of treatment. The Respondent miserably failed to utilize the opportunities given to her for Cross examination and also failed to pay the cost The respondent has filed this application only to drag on the proceedings on one or the other pretext. With

other contentions they pray for rejected the application.

4. I have heard by both the side and Perused the material on hand that for the following points arise for my consideration:

1. Whether the applications filed by the respondent are deserves to be allowed?

2. What order?

5. For the following reasons I given the answer above to point as under:

Point No.1: In the Affirmative

Point No.2: As per the final order
for the following reasons:

REASONS

6. Point No.1 :- This petition is filed by the petitioner against the Respondent for the relief of ejectment of the Respondent from the Petition

schedule premises. After filing the objections the Petitioner side one witness examined as Pw.1 and after granting the sufficient time the Respondent failed to cross examine the witness, hence the Cross examination is taken as nil and posted for Respondent side evidence. At this stage the respondent counsel has filed these applications for re-open the case and re call the PW.1 for cross exam. The counsel for the petitioner submits that, already sufficient time has granted and the Respondent has not shown any proper reason to re-call the witness and reopened the case, hence prays for dismissed the application.

7. The respondent counsel has stated that the Respondent is suffering from serious heart ailment and she was also admitted in FORTIS Hospital and undergone Angioplasty surgery and also recent she had suffered a severe stroke and mental shock and she is taking treatment and

the doctor has advised to take bed rest, hence not appeared before this court, the said reason stated is beyond her control and bonafide reason. Therefore if the Respondent is given one more opportunity to Cross examine the Petitioner witness and if the application is allowed on imposing the cost, then there is no hardship will be caused to the other side. The respondent counsel has properly explained for not Cross examine the witness. After considering the rival contention of the parties and also the facts and circumstances of the case to avoid the multiplicity of proceedings it is just and proper in my opinion that the respondent is entitled recall the PW.1 for Cross examination, however the respondent is liable to pay the cost. Therefore I find no any ground to reject the applications. Hence I answer point No.1 in the affirmative.

8. **Point no.2:** For the above reasons, I proceed to pass the following:

ORDER

I.A U/sec 151 of CPC & I.A. Under Order 18 Rule 17 of CPC R/w Sec.151 of CPC filed by the Respondent are hereby allowed, subject to payment of cost of **Rs.1000/-**.

Hereby re-opened the case and re called the PW.1 for the purpose of cross examination.

(DYAVAPPA .S.B.)

XV Addl. Small Cause Judge
& XXIII ACMM, Bengaluru.