

### **Orders on IA.7 & 8**

I.A. No.7 and 8 are filed by the claimant No.1 to reopen the case and recall PW.1 for cross-examination.

The said application is supported with affidavit of claimant No.1.

The claimants 3 and 4 as well as respondent opposed the said application stating that sufficient opportunity has already given to the claimant No.1.

On the above basis the point for consideration is as under:

“Whether the claimant No.1 made out sufficient grounds to recall PW.1 for further cross-examination by reopening the case?”

Heard the arguments. Perused the materials on records, on that basis, my finding on the above point is in the negative, for the following:

### **REASONS**

**Point:** The claimant No. 4 filed evidence affidavit as on 15.03.2023 and examined as PW.1. The chief examination of PW.1 is over as on 04.08.2013. Subsequently the case has been posted for cross-examination of PW.1 on 27.10.2023, 04.12.2023, 05.01.2024 and 05.01.2024 the PW.1 remained absent. Hence, the case is posted for cross-examination on 29.02.2024. On 29.02.2024 PW.1 was present before the Court. The claimant No.1 prays time for cross-examination that has been allowed as last chance with specific direction to complete the cross-examination of PW.1 on next date of hearing i.e., on 19.04.2024. On 19.04.2024 the PW.1 was present and he was partly cross-examined though there was time to complete to complete the cross-examination. The case is deferred for further cross-examination on 27.06.2024. On 27.06.2024 the claimant No.1 prays time for cross-examination though PW.1 was present before the Court and even the said prayer was allowed on payment of cost of Rs. 1,000/- and the case is deferred for cross-examination as last chance by 13.08.2024. Again on 13.08.2024 the PW.1 was partly cross-examined. Thereafter, the

case is again deferred for cross-examination on 27.09.2024. Even on 27.09.2024 the claimant No.1 not chosen to cross examine the PW.1 and prayed time for cross-examination of PW.1, even that has been allowed by the Court with a specific direction to complete the cross-examination on the next day of hearing i.e., on 19.11.2024. On 19.11.2024 the case has been called several times in the morning sessions, but there was no representation on behalf of the claimants 3 and 4. Hence, the case is again called in the after noon at 3.50 p.m., at that time the advocate for claimant No.1 prayed time for further cross-examination, that has been rejected by the Court as claimant No.1 failed to make out sufficient grounds to defer the case for cross-examination. Thereafter, the case is posted for evidence of claimant No.1 as on 16.12.2024. On 16.12.2024 the claimant No.1 remained absent and even respondent also remained absent. Hence, the Court passed the order and that there was no representation on behalf of the claimant No.1 and the case is posted for arguments on 22.01.2025. The case is called out on 22.01.2025 for arguments and on that date, the claimant

No.1 came up with I.A. No.5 and 6 to recall PW.1 for cross-examination that was allowed for payment of cost of Rs. 500/- each though the claimants 3 and 4 insisted to impose cost of Rs. 500/- each. The said IA No. 5 and 6 also allowed with a specific direction to complete the cross-examination of PW.1 without seeking further date on the morning session itself. Accordingly, the case is deferred on 14.02.2025. On 14.02.2025 when the case is again called out at 12.10. p.m., the advocate for the claimant No.1 prayed time for payment of cost imposed on 22.01.2025. while allowed the application to recall PW.1 for cross-examination. Hence, the case is again called out at 12.50 p.m., and that time, there was no representation. As such, the case is again called out on 1.10 p.m., and PW.1 was partly cross-examined. Thereafter, the advocate was represented for claimant No.1 prayed time for further cross of PW.1 and the said prayer has been rejected by the Court by observing all the aforesaid facts as well as in view of the specific orders by the Court. While passing the order on IA No. 5 and 6 that the claimant No.1 shall complete the cross-examination of PW.1 without seeking

further date and the Court has given detailed reasons in the order sheet dated 14.02.2025 that why the Court is rejecting the prayer of claimant No.1 to defer further cross-examination and accordingly the cross-examination of PW.1 was closed and the case has been posted for arguments as on 15.03.2025. On 15.03.2025 the claimant No.1 came up with the present applications i.e., I.A. No. 7 and 8. The order sheet sufficiently reveals that this Court has granted sufficient time to the claimant No.1 to complete the cross-examination. In spite of that the claimant No.1 has not chosen to cross examine the PW.1. In the case on hand, the Court has granted several opportunities to the claimant No.1 to complete the cross-examination. In spite of that the claimant No.1 has not completed the cross-examination of PW.1. In fact no specific grounds made out in the affidavit filed in support of I.A. No.7 and 8 that why PW.1 has not been fully cross examined by claimant No.1. In this context, it is useful to refer the principle laid down by the Hon'ble sc in a Crl. Appeal No. 1191-1192 of 2015 in a case of AG Vs. Shivkumar Yadav and another (AIR 2015 SC 3501). In the case on hand it is held that if the due opportunity

has been given and witness has been duly cross examined at the earliest occasion, certainly witness cannot be recalled for further cross-examination. It is also relevant to note that the principle laid down in a case of Ram Rathi Vs. Mange Ram reported in in (2016) 11 SCC 296 wherein it is held that the witness cannot be recalled for further elaboration on left out points. Even in this case the Court has given due opportunity on multiple occasions for the claimant No.1 to complete the cross-examination. In spite of that the claimant No.1 not chosen to complete the cross-examination of PW.1. Under such circumstances, certainly the applications cannot be allowed. Hence the above point is answered in the negative. In the result, I proceed to pass the following:

#### ORDER

IA No.7 filed under Section 151 of CPC and I.A. No.8 filed under Order 18 Rule 17 of CPC by the claimant No. 1 are hereby dismissed.

For arguments by 21.04.2025.

(PADMA PRASAD)  
II Addl. City Civil and Sessions Judge,  
& Spl. Judge, Bengaluru.

