

### **Orders on I.As. Dated 17-09-2021**

The defendant No.1 filed I.A. u/S.151 of C.P.C. seeking reopen the case of the defendant for the purpose of tendering D.W.1 for cross-examination, I.A. u/O.18 R.17 of C.P.C. praying to recall the Order dated 31-8-2021, wherein the evidence of D.W.1 was not tendered for cross-examination and discarded his evidence, by permitting D.W.1 for tendering cross-examination.

2. The learned counsel for the plaintiff filed his common objection statement to these I.As. and seriously objected to allow these applications, on the ground that this Court, after giving ample opportunities to D.W.1 to tender for cross-examination and even after service of Court notice, when the D.W.1 was failed to appear before the Court, his evidence was discarded and as such, at this stage, the applications are not maintainable.

3. I have heard the arguments of both learned counsels and perused the records.

4. Admittedly, defendant No.1 was examined as D.W.1 on 15-2-2020 and subsequently thereof, the D.W.1 was failed to appear before the Court to tender for further chief examination as well as for the purpose of cross-examination. This Court, on 12-8-2021 issued Court notice to the defendant, by calling upon him to keep present before the Court to tender for cross-examination. Even though the said notice was served

on the defendant, but, however, the D.W.1 failed to tender for cross-examination and as such, this Court, by an Order dated 31-8-2021 taken the evidence of D.W.1 as not tendered for cross-examination and accordingly, it is discarded. Now, at this stage, D.W.1 filed these applications seeking permission to tender for cross-examination on the ground that previous counsel has not informed him about the hearing dates and due to non-cooperation of his earlier counsel, he was unable to appear before the Court and as such, one more opportunity has to be given to him to tender for cross-examination.

The reason assigned by D.W.1 for non-appearance before this Court for the purpose of cross-examination is appears to be bonafide. In such being the case, if one more opportunity is given to D.W.1 to tender for cross-examination, no harm and injury will be caused to the interest of the plaintiff. Per contra, the inconvenience caused to the plaintiff can be compensated by awarding some cost to him. The defendant No.1 has made out a ground to allow these applications. Hence I proceed to pass the following:

### **ORDER**

Both the I.As. dated 17-09-2021 filed by the defendant No.1, u/S.151 of C.P.C. and u/O.18 R.17 of C.P.C. are hereby allowed on payment of cost of Rs.500/- to the plaintiff, with a direction to keep D.W.1 present on

the next date of hearing without any fail and tender for cross-examination.

**(Ishrath Jahan Ara)**  
**III A.C.C. & S.J., Bengaluru.**

**Orders on I.As. Dated 17-09-2021**

The defendant No.1 filed I.A. u/S.151 of C.P.C. to reopen the case of the plaintiff for the purpose of cross-examination of P.W.1 and I.A. u/O.18 R.17 of C.P.C. praying to recall Order dated 31-8-2021 and permit him to further cross-examine P.W.1

The defendant No.3 filed I.A. u/S.151 of C.P.C. to reopen the case of the plaintiff for the purpose of cross-examination of P.W.1 and I.A. u/O.XVIII R.17 r/w. S.151 of C.P.C. praying to recall Order dated 31-8-2021 and permit him to further cross-examine P.W.1.

2. The plaintiff has filed his common objection statement to these I.As. submitting that on 31-8-2021 the matter was posted for cross-examination of D.W.1 and as D.W.1 was not present before the Court, evidence of D.W.1 was discarded and and recorded further chief of P.W.1 and defendants 4 to 8 have further cross-examined P.W.1 and matter was posted for evidence of defendants 4 to 8. Now defendants No.1 and 3 have filed these applications to recall P.W.1. Hence the applications are devoid of merits and liable to be dismissed.

3. Heard the arguments.

4. Admittedly, the plaintiff, by filing applications on 31-8-2021 u/s.151 of C.P.C. and also u/O.18 R.17 of C.P.C. and IA u/O.7 R.14 of C.P.C., got reopened the case of the plaintiff to lead further chief examination from his side and accordingly, P.W.1 was further examined and got produced 5 documents as Exs.P40 to P44 documents and even though defendants 4 to 8 further cross-examined P.W.1, but, however, on that day the defendant No.3 was not further cross-examined on these documents.

The defendants 1 and 3 in their respective applications have stated that on that day their counsel was held up in some other Court and for that reason he was unable to appear before the Court to further cross-examine P.W.1 on these documents and if one more opportunity is given to them to further cross examine P.W.1 on these documents, no harm and injury will be caused to the interest of the plaintiff.

Even though the plaintiff has seriously objected to allow these applications, but, however, as I have discussed supra, the plaintiff, by filing applications on 31-8-2021, lead his further examination-in-chief and the same has not been cross-examined by this defendant No.4. In such being the situation, if one more opportunity is given to defendants 1 and 3 to further cross-examine P.W.1 on the documents filed

and marked as Exs.P40 to P44, no harm and injury will be caused to the interest of the plaintiff. However, the inconvenience caused to the plaintiff can be compensated by awarding some cost to him. The defendants No.1 and 2 have made out a ground to allow these applications. Hence I proceed to pass the following:

### **ORDER**

Both the I.As. dated 17-09-2021 filed by defendant No.1 u/S.151 of C.P.C. and u/O.18 R.17 of C.P.C. and both the I.As. dated 17-09-2021 filed by defendant No.3 u/S.151 of C.P.C. and u/O.XVIII R.17 r/w. S.151 of C.P.C. are allowed on payment of cost of Rs.500/- each, on a condition that, without seeking any adjournment on the date when P.W.1 is present before the Court they have to further cross-examine the witness.

To keep P.W.1 and D.W.1 present, call on 04-10-2021.

**(Ishrath Jahan Ara)**  
**III A.C.C. & S.J., Bengaluru.**