

Heard arguments on I.A. No.25 on side of the plaintiff and the defendant. For orders call again.

ORDERS ON I.A No. 25

The applicant/plaintiff has filed I.A. No.25 under Section 151 of CPC. Wherein the application she sought for recall the order dated 13/02/2024 as to permit P.W.2 for further chief examination.

2. In support to the application plaintiff No.1(a) has sworn to the affidavit contending that, the plaintiffs have filed the suit for the relief of mandatory injunction. Further on 13/02/2024 the case was listed for further evidence of the plaintiff side and on the said this court recorded there is no further evidence since no list of witness was filed by the plaintiffs. Accordingly the above case has been posted for argument. Since some of the important documents are already produced before this court as per the order of this court dated 17/01/2024, it is very much necessary to permit her to mark those documents. Hence, it is just and necessary to recall the order dated 13/02/2024 by permitting her to examine as P.W. 2. There was no any deliberate intention on her part or her counsel in not examining her on the last date of hearing. The reasons mentioned above are bonafide one and not intentional one. If this application not allowed she will be put to irreparable loss, injury and hardship. On the other hand no loss or hardship will be caused to the plaintiff. On these grounds prayed for allowing the application.

3. On the contrary, the defendant tendered his objections wherein it contended that, the application filed by the plaintiff not maintainable either in law or on facts and the same is liable to be dismissed. The averments made in the affidavit are all false and baseless. The plaintiff has not made out any case for grant of any relief from this court. The application is totally devoid of merits and liable to be rejected. The plaintiff has filed the application with malafide intention to drag the proceedings on one pretext or the other. On earlier occasion also the plaintiff filed similar applications and despite his objections the said applications came to be allowed on cost. Taking undue advantage of the lenience of

this court the plaintiff has been filing one or the other applications that too at the fag end of the proceedings. This very fact holds a mirror to the conduct and behavior of the plaintiff. The application is totally devoid of merits. The plaintiff has not revealed as to why the list of witnesses is now required to be filed and why she want to lead evidence as a witness in the suit and why the documents are to be produced at the fag end of the proceedings. The proposed documents now sought to be produced by the plaintiff are not at all relevant for deciding the question of law involved in the suit. The alleged documents do not in any way help the plaintiff to prove his case. On these grounds prayed for dismissal of the applications with exemplary costs.

4. Heard and perused material on record.

5. The point that arises for my consideration is:-

“Whether the application filed by the applicant/plaintiff deserve to be allowed?”

6. My answer to the above point is in the affirmative for the following:-

REASONS

7. As per the averments of the affidavit annexed to the application and it is particular case of the applicant/plaintiff that, since some of the important documents are already produced before this court as per the order of this court dated 17/01/2024, it is very much necessary to permit her to mark those documents. Hence, it is just and necessary to recall the order dated 13/02/2024 by permitting her to examine as P.W. 2 and there was no any deliberate intention on her part or her counsel in not examining her on the last date of hearing. As such the documents now sought to be produced are very much essential and same are very much necessary for effective adjudication of the above case and it is necessary to recall the

order dated 13/02/2024 permitting to examine herself as P.W. 2.

8. On the contrary, it is particular objection of the defendant that I.A. No.25 is misconceived and it is filed only with an intention to drag on the proceedings. The averments and reasons assigned in the affidavit are all denied as false and baseless. The plaintiff has not revealed as to why the list of witnesses is now required to be filed and why she want to lead evidence as a witness in the suit and why the documents are to be produced at the fag end of the proceedings. The proposed documents now sought to be produced by the plaintiff are not at all relevant for deciding the question of law involved in the suit. The alleged documents do not in any way help the plaintiff to prove his case.

9. After summarizing the facts and circumstances of application and objections, it necessary to make notify the ingredients of law as contemplated under Indian Evidence Act. As per the Indian Evidence Act, there are five stages with respect to documents viz., production, objections, admission, appreciation and probative value of the documents proposed to produce. It is of the objection as contended by the defendant with respect to admissibility of the documents on record. When other stage kept open for discussion the reason assigned by the defendant in his objection not holds any water. That for the reason herein above referred found on the application for further chief examination of P.W.2 it consequently the same herein warrants to allow the instant application. Further no substantial reasons that the defendant brought forth on record to reject the application and admitted the documents proposed to be produced by the applicant/plaintiff.

10. Further, if the application allowed, the defendant has also the right for cross-examination upon such documents. Upon such cross-examination it can made out the case of the plaintiff that such proposed documents not relevant and not a material to decide the suit in effectually. When the facts are stood like that, the objections tendered

by the defendant not to permit the applicant to produce such documents does not holds any water. Accordingly, that I have not find any merits in the objections tendered by the defendant. Consequently, the application filed by plaintiff deserve to be allowed. Hence, I answer the point raised for consideration in the affirmative and proceed to pass the following:-

ORDER

Interim application No.25 filed by the plaintiff hereby allowed. Consequently the case from arguments stage hereby recalled.

P.W. 2 is permitted to lead her further evidence on the proposed documents.

Counsel for the defendant filed the memo stated the defendant B.K. Venkatachalaiah was died on 28/01/2025. For steps against to L.Rs of the defendant and for further chief-examination of P.W. 2 by 19/03/2025.

(Onkarappa.R)
V ACC &SJ, Bengaluru.