

Orders on I.As. No. I/21 and II/21

- 1) u/O.XVIII R.17 r.w. S.151 of C.P.C.**
- 2) u/O.XVIII R.17 r.w. S.151 of C.P.C.**

Heard the learned counsel appearing for the 2nd Defendant on I.A.Nos.I/21 and II/21 filed u/O.XVIII R.17 r.w. S.151 of C.P.C. praying to reopen the case of the Plaintiffs for the purpose of cross-examination and I.A. u/O.XVIII R.17 r.w. S.151 of C.P.C. praying to recall P.W.1 for the purpose of further cross-examination and perused the Order Sheet.

Admittedly, the Plaintiffs have filed their objection to both the IAs. and they seriously objected to allow these applications on the ground that the Defendant on one or the other pretext is filing this kind of applications and even though the witness is present before the Court for the purpose of cross-examination, the Defendant has failed to cross-examine the P.W.1 and after the witness was discharged, he is once again filing the applications and this is the second application filed by the Defendant to recall of P.W.1 on similar grounds. Hence, they have seriously objected to allow these applications.

No doubt, this Court, based on the application filed by the Defendant on the same provision of law, recalled P.W.1 for the purpose of cross-examination by reopening the case of the Plaintiff on 4-1-2021 and based on the said order, the P.W.1 was very much present before the Court on 19-3-2021, but, however, the Defendant has failed to

cross-examine the P.W.1 in spite of the opportunity and as such, this Court, on 19-3-2021 taken the cross-examination of P.W.1 as Nil and proceed further by discharging the witness. Subsequently, the Defendant once again, on 19-7-2021, filed these applications seeking recall of P.W.1 for the purpose of cross-examination. Admittedly, the Defendant has not cross-examine the P.W.1. However, the learned counsel for the Defendant has stated that due to his personal inconvenience, he could not able to appear before this Court to cross-examine P.W.1 an as such, this Court has taken the cross-examination of P.W.1 as Nil and learned counsel further stated that, if one more opportunity is given to him, he, without seeking any adjournment, on the same day itself cross-examine the witness. The suit filed by the Plaintiff is for specific performance of agreement dated 16-3-2013. In such being the case, if one more opportunity is given to this Defendant to cross-examine the P.W.1, no harm and injury will be caused to the interest of the Plaintiff. However, the inconvenience caused to the Plaintiffs can be compensated by awarding some cost to them. The Defendant has made out a ground to allow these application. Hence, I proceed to pass the following:

ORDER

Both the Applications filed by the 1st Defendant u/O.XVIII R.17 r.w. S.151 of C.P.C. as per I.A.No.1/21 and u/O.XVIII R.17 r/w. S.151

of C.P.C. as per I.A.No.II/21 are hereby allowed on payment of cost of Rs.1,000/- with a condition that, without seeking any adjournment on the date when the witness is present before the Court has to cross-examine the witness.

Call on 26-08-2021.

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