

ORDERS ON IA No.4

The defendants have filed the present application U/o XVIII Rule 17 R/w Sec.151 of CPC seeking to recall order dated 02.04.2025 and to recall PW1 for cross examination by defendants' side.

2. It is averred that in Memorandum of Facts filed in support of the application that on 21.03.2025 when counsel for defendants was ready for further cross examination of PW1, said witness remained absent and matter was adjourned to 02.04.2025 as per request of counsel for plaintiff. Thereafter, on 02.04.2025 counsel for defendants had matter before court hall Nos.1 and 2 of Hon'ble High Court of Karnataka. Hence, colleague of said counsel sought for passing over the matter to 3.00 p.m. or to next day to complete cross examination of PW1. But, this court closed the stage and took further cross examination of PW1 as nil and posted the matter for defendants' side evidence. Due to bonafide reasons counsel for defendants could not keep himself present for cross examination of above witness and PW1 is already partly cross examined by defendants' side. There are a few remaining important questions to be asked to PW1 to bring true facts before this court. The defendants have good case on merits and they will be put to irreparable loss and injury if application is not allowed. These amongst and other grounds, it is prayed to allow the application.

3. The plaintiff has filed objections to the above application wherein it is averred that the application is not maintainable and same is liable to be dismissed. Further, the present application with two prayers is not maintainable. The

plaintiff has narrated brief averments of this case in the application and it is further stated that PW1 has already been examined and marked documents on 20.02.2024. Thereafter, the matter was posted for cross examination of PW1 on several dates and said witness is substantially cross examined by defendants' side on 26.06.2024, 27.06.2024, 06.07.2024 and 05.08.2024. Now, defendant has adopted the attitude of dragging on proceedings to harass the plaintiff. Therefore, even after exhausting all questions to be posed to PW1, defendants have tried to put further questions which are irrelevant and unnecessary to decide the issues between the parties. Hence, this court has rightly rejected such irrelevant questions and posted the matter for further cross examination of PW1. Thereafter, defendants filed Transfer Petition No.970/2024 before the Hon'ble Prl. District and Session Court, Bengaluru. Even after dismissal of said petition, PW1 was present before court and counsel for defendants has taken time to cross examine said witness. Despite sufficient opportunities PW1 is not cross examined further with an intention to drag the proceedings and hence the application is liable to be dismissed. Further, earlier application IA No.2 U/o 1 Rule 10 of CPC was filed to delete D2 to 5 in order to drag on the proceedings and same was rejected by this court on 28.03.2024. Thereafter, petitioners filed WP NO.10331/2024 against said order. Further, defendants filed one more application U/o 7 Rule 11 of CPC under IA No.3, which is also dismissed by the court on 20.06.2024 and same is not challenged by defendants. These amongst and other grounds, it is prayed to reject the application.

4. The following points arises for consideration:

1. Whether defendants has made out grounds for recall of PW1 for further cross examination as prayed for in the application?

2. What order?

5. Heard both sides. Perused records. The following findings are on above points:

Point No.1. ***In the affirmative***

Point No.2. ***As per final order for following:-***

REASONS

6. The plaintiff has filed present suit for recovery of Rs.1,28,16,076/- with future interest at the rate of 24% p.a. from defendants towards electrical materials sold and supplied to defendants under 10 invoices. On the other hand defendant No.1 has filed his written statement, denying the entire claim of the plaintiff and said written statement is adopted by D2 to 5. After framing of issues, the matter is posted for evidence, plaintiff has got examined its proprietor as PW1, who has got marked as many as 29 documents in support of his case and said witness has been substantially cross examined by other side on various dates. It further shows that during last cross examination of PW1 on 05.08.2024, this court has rejected a question of defendants' side on ground of relevancy. Thereafter despite posting of the matter repeatedly for further cross examination of PW1, the defendants have not chosen to cross examine the witness and this court by order dated 02.04.2025 has taken further cross examination of said witness as nil. Now, defendants

have come up with present application seeking an opportunity to further cross examine PW1, which is seriously objected by the other side on the grounds mentioned in the objections. However, looking to the relief claimed in the suit and defense taken by defendants in the written statement, it appears that defendants should be given an opportunity to put forth their defense effectively by cross examining PW1. Though the said witness is elaborately cross examined by defendants' side, considering the grounds mentioned in the application it appears necessary to recall said witness for complete adjudication of the matter. Further, there is no bar to consider two prayers in single application. The delay and inconvenience caused to other side may be compensated by means of suitable costs and no prejudice will be caused to plaintiff if application is allowed. Hence, application deserves to be allowed and accordingly **Point No.1 is answered in the affirmative.**

7. Point No.2. For the reasons stated and findings given on point No.1, following is:

ORDER

IA No.4 filed by defendants U/o XVIII Rule 17 R/w Sec.151 of CPC is allowed on cost of Rs.2,000/-.

Subject to payment of cost PW1 is recalled for further cross examination by defendants' side.

Call on for cost and further cross examination of PW1 as last chance by 28.06.2025.