

ORDER ON MEMO

The defendant filed the memo stating that DW.3 is suffering Diagnosed with IHD unstable angina with uncontrol Hyper tension and diabetic. In view of ill health of DW.1 she is not in possession to attend to court. Hence, prayed to discard evidence of DW.3. In support of memo defendant have produced medical certificate.

2. Plaintiffs have filed objections to the application, contending that memo is misconceived and untenable in the eye of law and deserves to be dismissed. The plaintiff specifically denied the averments of memo and stated that after death of the counsel for defendants they have led evidence and got marked documents. After completion of the evidence of defendant plaintiff advanced arguments and matter adjourned for defendant arguments. At that stage, the defendant no. 5 to overcome the misrepresentation and the admission given by DW.1 and 2 has instigated defendant no. 1 to submit written statement at the fag end of proceedings. Thereafter, defendant no. 1 submitted her chief examination which was recorded as DW.3 on 12-12-2023 and counsel for plaintiff cross-examined DW.3 in part. The defendant no. 1 gave ample admission with relating to subject matter of the property and relief claimed by plaintiff. Notifying the admissions given by DW.3 now defendant no. 5 and other defendants intentionally intends to avoid to make available DW.3 for further cross-examination. Now a

matter of after thought by giving lame and false excludes filed memo. Thus there is absolute not valid and cogent evidence has been assigned under the memo and memo is illegal erroneous and deserves to be rejected. Since last more than 9 years, defendants have made efforts in delaying the proceedings and now after thought the defendants have resorted illegal tactics by filing the memo. Therefore, memo filed by the defendants is not maintainable and deserves to be rejected. With these contentions the plaintiff prayed to reject the memo.

3. In support of their contentions, plaintiff produced decision reported in CC No. 344/2017 **Bhasawati Ray Vs. Smt. Tapasee Chowdhury** and another wherein it is held that the evidence of a witness will not be expunged but its evidentiary value considered at the time of hearing. Despite cross-examination of such witness having not been completed, holds good ground even in the context of non-party witnesses.

4. Heard both counsels and perused the records. The plaintiffs have filed this suit for the relief of specific performance of contract and declaration and permanent injunction and matter is posted for further cross of DW.3. At this stage, the defendant have filed memo stating that DW.3 is not in position to come before the court for further cross-examination. Hence, prayed to discard the evidence of DW.3. Plaintiff objected to the memo.

5. On perusal entire records, the evidence of DW.3 recorded on 05-10-2023 and Ex.D9 'E' and 'F' were marked.

Plaintiffs partly cross-examined DW.3 and got marked Ex.P5 and 6 and the matter was posted for further cross-examination of DW.3. Now the defendant no. 1 counsel filed memo to discard the evidence of DW.3 stating that she is unable to appear before the court. On perusal of records the evidence of DW.3 is already recorded and part of cross-examination of DW.3 is completed, at this stage, the evidence of DW.3 cannot be discarded in entirety. If the DW.3 is unable to appear before the court her further cross-examination can be taken as not offered. The entire evidence of DW.3 cannot be discarded. Therefore, the memo filed by the defendant cannot be allowed. Hence, I proceed to pass the following;

ORDER

**The memo dated 15-02-2024 filed
by defendant no.1 is hereby rejected.**

For further cross of DW.3

Call on 05-08-2024

Sd-

**IV Addl. Civil Judge & JMFC,
Belagavi.**