

ORDERS ON I.A.No.XVII FILED BY THE DEFENDANT
NO.3 UNDER SECTION 151 OF CPC AND I.A.XVI
UNDER ORDER XVIII RULE 17 R/W SECTION 151 OF
CPC

The defendant No.3 has filed I.A.XVII to reopen the case of the plaintiff for the purpose of cross examination and I.A.XVI to recall the PW1 for cross examination.

2. In the affidavit annexed to the applications, it is averred that the suit is for declaration and for permanent injunction. The defendant No.3 has filed written statement denying the claim of the plaintiff and also taken various grounds for the dismissal of the suit.

3. It is averred that the defendant No.3 had undergone a bypass surgery. Thus, he could not instruct his advocate to cross examine of PW1 at the relevant point in time. Therefore, the cross examination of PW1 taken as nil. It is further averred that defendant No.3 has case on merits. Cross examination of PW1 is necessary to prove his defence. Accordingly, he prayed to allow the application.

4. The plaintiffs have filed objections denying the contents of the defendants. They have denied that due

bypass surgery, defendant No.3 could not instruct his counsel for the cross examination.

5. It is the contention of plaintiffs that, once the cross examination was taken as nil, later PW1 was recalled by the orders of this court. In spite of the said orders, defendant no 3 did not cross examine PW1. The applications are devoid of merits. Accordingly, they prayed to dismiss the application.

6. Heard. Perused the materials available on record.

7. Now the points that arise for consideration are as follows;

1. Whether the defendant No.3 has made out grounds to recall PW1 for the purpose of cross examination?
2. What order?

8. My answer to the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following:

REASONS

9. **Point No.1:-** It appears that, at the first instance, defendant No.3 has not cross examined PW1. Therefore, cross examination of PW1 was taken as nil. Later, on the orders of an application, PW1 was recalled. Despite of availing opportunities, again defendant No.3 has not cross examined PW1. Therefore, cross examination of PW1 was taken as nil. Now, defendant No.3 has come up with these applications.

10. Though there are no sufficient grounds to entertain the application, defendant No.3 has filed written statement, he has denied the several contents of the plaint and he has also taken several defences in the written statement. In order to fortify the defence of defendant No.3, cross examination of PW1 appears to be necessary.

11. The defendant No.3 has caused delay. However, the said delay shall not curtail the right of defendant No.3 to cross examine PW1. The delay has to be compensated by imposing heavy cost. Therefore, I am of the opinion that defendant No.3 has made out grounds to allow the applications. Accordingly, point No.1 is answered in the Affirmative.

12. **Point No.2**:- In view of the above discussion, I proceed to pass the following:

ORDER

I.A.XVII filed by the defendant No.3 under section 151 of CPC and I.A.XVI Under Order XVIII Rule 17 R/w Section 151 of CPC are hereby allowed on cost of Rs.1,000/- each.

The case of the plaintiff is recalled.

PW1 is recalled for the purpose of cross examination.

Defendant No.3 is directed to cross examine PW1 by next date of hearing without fail.

For cross examination of PW1.

Call on 28.10.2024.

Sd/-

**C/c III Addl. C. J. & JMFC,
Belagavi.**