

ORDERS ON I.A. NO. 10

The defendant no. 1 filed I.A. No. 10 U/order 18 Rule 4 (2) R/w Order 26 Rule 10 R/w Sec. 151 of CPC praying to appoint Court Commissioner to record the cross-examination of DW.3 as she is not in position to attend the court .

2. In the affidavit annexed to the application, defendant no. 1 stated that plaintiff has filed this suit for specific performance of agreement of sale dated 14-05-2015 and she has lead her evidence as DW.3 and under gone cross-examination in part. When the matter posted for further cross-examination her doctor has advised to take rest as she has Dy-nosed with IHD unstable angina with uncontrolled Hypertension and diabetes. In view of the same, she could not attend the court hence, she requested to discard her evidence but the said memo was rejected and posted the matter for cross-examination. She stated that still she is in bed rest and not in position to move from whom. Therefore, to avoid further delay in prosecuting the suit she has filed

present application for appointment of Court Commissioner. With these contentions, defendant prayed to allow the applications.

3. The plaintiff filed objections to the application contending that application is not tenable in the eye of law. The plaintiff specifically denied the affidavit averments and stated that the defendant no. 5 to overcome the misrepresentation and admission given by DW.1, 2 they have instigated the defendant no. 1 to file written statement at the fag end of the proceeding and she examined as DW.3 and part cross-examination of DW.3 has been recorded. Now the DW.3 intentionally avoiding to make available for cross-examination. Now a matter of after thought by giving claim and false excuses has filed this application. There are no valid and cogent reason assigned by the DW.3 to allow the application. Plaintiff stated that in order to harass them the defendants are filing one after another application to drag on the matter. With these contentions, prayed to reject the applications.

4. Heard both the counsels.

5. Perused the entire records. It is true that defendant no. 1 has been examined as DW.3 and part cross-examination has been recorded.

After that she filed memo to discard her evidence as she is enable to present before the court for further cross-examination. Said memo was rejected by this court for the reason that the part cross-examination of DW.3 has been recorded and her evidence cannot be discarded. Now the DW.3 filed this application to record her evidence through Court Commissioner. The plaintiff objected to the application contending that only to drag on the matter DW.3 has filed this application.

6. On perusal of the records the defendant no. 1 initially filed memo stating that due her ill-health she is unable to appear before the court and prayed to discard her evidence. Said application was rejected by this court, now she intend to complete her evidence by appointment of Court Commissioner. In the circumstance, in order to complete cross-examination of DW.3 Court Commissioner has to be appointed subject to condition that the cost of Court Commissioner has to be borne by DW.3. If the application is allowed, no hardship will be caused to the plaintiff. In these circumstance, the application filed by the defendant No. 1 has to be allowed in the interest of justice and equity. Hence, I proceed to pass the following;

ORDER

The I.A. No.10 filed by defendant U/order 18 Rule 4 (2) R/w Order 26 Rule 10 R/w Sec. 151 of CPC is hereby allowed.

Both counsels are directed to suggest the name of an Advocate to appoint him as Court Commissioner.

Sd/-

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