

09-06-2026:

COMMON ORDER ON IA No.5 and 6

The defendant has filed I.A. No.5 under Section 151 of C.P.C. and I.A. No.6 under Order XVIII Rule 17-A R/w. Sec. 151 of C.P.C., seeking permission to cross-examine PW.1 and to proceed with the case by setting aside the order whereby the opportunity of cross-examination was closed and the matter was posted for further stage.

2. In the affidavits filed in support of the applications, it is contended that the defendant could not cross-examine PW.1 when the matter was posted for cross-examination. It is stated that the evidence of PW.1 is crucial for proper adjudication of the dispute and that cross-examination is only effective mode of testing the veracity of the evidence led by the plaintiff. The defendant contends that the plaintiff has filed a false suit and unless an opportunity is granted to cross-examine PW.1 the truth of matter cannot be brought before the Court. It is further contended that no prejudice would be caused to the

plaintiff if the applications are allowed, whereas the irreparable loss and hardship would be caused to the defendant if the opportunity is denied. Hence, the defendant has sought allowing of the applications.

3. The plaintiff has filed detailed objections contending that the applications are not maintainable either in law or on facts. It is contended that after filing of examination-in-chief affidavit of PW.1, the matter was posted for cross-examination at that stage, the learned counsel for plaintiff submitted that there was a possibility of compromise and requested referral of the matter to the mediation. Accordingly, the matter was referred to mediation. However, according to the plaintiff neither the defendant nor his elders approached the plaintiff for settlement and the plea of compromise was only a device to delay the proceedings. It is further contended that the defendant herself registered the agreement dated 23-10-2017 and already the plaintiff has paid earnest amount of Rs.42,00,000/- to the defendant. The defendant has utilized the said amount for family necessity. It is submitted that on 17-12-2025 when the matter was posted for cross-examination of PW.1, PW.1 was present before the court, but there was no

representation on behalf of the defendant. Therefore the court rightly recorded the cross-examination of PW.1 as nil. Thereafter, on 23-01-2026, the defendant has filed the present application. The plaintiff further contended that the applications are technically defective as there is no specific prayer seeking reopening of the plaintiff's evidence or recalling of PW.1. According to the plaintiff, unless the evidence is reopened and witness is recalled the defendant cannot seek permission to cross-examine the PW.1. Therefore, the applications are liable to be dismissed.

4. Heard arguments of both sides. Perused the material available on record.

5. The points that arise for consideration is:

“ Whether the defendant has made out sufficient grounds to permit cross-examination of PW.1 by setting aside the order closing the cross-examination opportunity ?”

6. My finding on the above point is in the **Affirmative** for the following;

REASONS:

7. It is not in dispute that the PW.1 has filed examination-in-chief affidavit and matter was posted for cross-examination. It is also not in dispute that, on the date fixed for cross-examination, the defendant failed to avail the opportunity and consequently the cross-examination of PW.1 was taken as nil. The principle object of every judicial proceedings is to ascertain the truth and render the substantial justice between the parties. The cross-examination is one of the most valuable rights available to on litigant. It is an effective method test the truthfulness, credibility and reliability of a testimony of a witness. Ordinarily unless there is deliberate negligence, the gross abuse of process or malafide conduct, a party should not be denied opportunity to cross-examine a material witness.

8. In the present case on hand, the records disclose that the suit is at the stage of plaintiff's evidence and the evidence of PW.1 constitutes a substantial part of the plaintiff's case. The consequences of denying cross-examination would be serious as the defendant would be deprived of an

opportunity to challenge the testimony of PW.1. Therefore, such denial may ultimately result in failure of justice.

9. The objection of plaintiff that, the application do not contain specific prayers for reopening of evidence or recalling of plaintiff's evidence is a technical objection. The substance of the application clearly reveals that the defendant seeks restoration of the opportunity to cross-examine PW.1. It is well settled that the procedural laws are handmaids of justice or intended to advance the cause of justice rather than defeat it on technical grounds. Mere omission of opportunity terminology in the prayer cannot be a ground to reject the application when the intention of reliefs sought are apparent from the contents of the application. At the same time it cannot be ignored that the defendant failed to avail the opportunity granted earlier and the plaintiff had remained present before the Court. Therefore, the inconvenience caused to the plaintiff must be compensated by imposing reasonable costs. Therefore, considering the nature of the suit, the matter of cross-examination of PW.1, and in order to afford a fair opportunity to both parties, this court is

of the opinion that one final opportunity deserves to be granted to the defendant, subject to payment of cost. Accordingly, the point for consideration is answered in the **Affirmative** and therefore, I proceed to pass the following;

ORDER

I.A. No.5 and 6 are hereby allowed, subject to cost of Rs.1000/- payable by the defendant to the plaintiff.

The defendant shall pay the cost on or before the next date of hearing.

The order regarding cross-examination of PW.1 as nil stands recalled.

PW.1 is recalled for the limited purpose of cross-examination. The defendant is granted one final opportunity to cross-examine PW.1 on the next date of hearing without seeking any unnecessary adjournment. In the event of failure to cross-examine PW.1 on the next date, the opportunity shall stand forfeited without any further order.

Call on 06-07-2026 for cross-examination of PW.1 and payment of cost.

Senior Civil Judge, Bailhongal.