

ORDER ON I.A.NO.VIII U/O 14 RULE 5 R/W
SECTION 151 OF CPC

(Stage: Defendant argument on merits)

This application is filed by the defendant praying to recastinate the issue in the interest of justice.

2. In the memo of facts it is stated that the above suit is filed for recovery of money based on 5 promissory notes alleged to be executed by defendant on 24.04.2016. The defendant has denied the execution of promissory notes and also signatures on the promissory notes contending that her signatures were forged one. Based on pleadings and materials on record 5 issues were framed, issue No.3 i.e., execution of promissory notes, onus of proof placed on defendant. It is serious defect of procedure the issue No.3 is unwarranted and issue No.1 is to be recastinated by placing onus of proof on the plaintiff with regard to the genuinity of the alleged promissory notes. Hence, prayed to allow the application.

3. Per contra, the plaintiff in the objection contended that the court has properly framed the issues based upon the pleadings and the parties have led their evidence when the matter is posted for defendant argument at this belated stage the present application is filed and there is no need to recaste the issues prayed to reject the application.

4. In spite of giving sufficient opportunity to both the counsel not addressed the argument. Perused the materials on record.

5. As alleged the present suit is filed for recovery of sum of Rs.8,85,800/-. It is alleged that the defendant have borrowed a sum of Rs.5,15,000/- for his domestic and family necessities with interest at 24% per annum and executed 5 on demand promissory note on the very same day i.e,

on 24.4.2016 in the present of the witnesses and inspite of several request not repaid the above amount. Per contra, the defendant contended in the written statement that the plaintiff has created and fabricated the alleged document and she has not signed on the alleged pronotes. In view of the above pleadings and materials on record this court has framed the issue No.1 placing onus on the plaintiff to prove the borrowing of amount and also execution of promissory notes which is rightly framed. Further issue No.3 is framed placing onus on the defendant that she has to prove that she has not borrowed any amount from the plaintiff and alleged promissory notes are created and fabricated document. Perusing the material on record this court is of the opinion that already in issue No.1, the burden of proving borrowing of amount by the defendant on execution of the promissory note is on the plaintiff, again in issue No.3 placing burden on the defendant that to prove she has not borrowed amount is redundant one, so far as the remaining portion of issue i.e., the promissory notes are created and fabricated document is rightly framed. But, since both the points of facts are taken together among one which is redundant needs to be rectified by recasting issue No.3. Hence, the issue No.3 is hereby recasted as under:

“Whether the defendant proves that the alleged promissory notes are created and fabricated document?”.

In view of the above discussion the following:

ORDER

I.A.No.VIII is filed by the defendant under Order 14 Rule 5 R/w Section 151 of CPC is hereby allowed.

**II ADD. SENIOR CIVIL JUDGE,
BALLARI.**

Issue No.3 recasted.

For plaintiff evidence on issue
No.3 if any.

Call on:24.07.2023.

**II ADD. SENIOR CIVIL JUDGE,
BALLARI.**