

OS NO.397/2008

ORDER ON IA UNDER ORDER XVIII RULE 17 OF CPC

The present application is filed by the plaintiff under Order XVIII Rule 17 of CPC praying to recall DW1 for the purpose of further cross-examination.

In support of the application, it is averred that the plaintiff has filed the present suit for specific performance of contract. During the course of evidence, the document marked as Ex.P7, namely the agreement to sell and the General Power of Attorney standing in the name of defendant No.10, has been disputed by the plaintiff contending that the said documents are fabricated and not binding upon the plaintiff. It is contended that certain material aspects regarding the execution and validity of the said documents require further cross-examination of DW1 and therefore, recall of DW1 is necessary for proper adjudication of the matter.

The defendant has filed objections opposing the application contending that the application is not maintainable either in law or on facts. It is contended that the plaintiff was well aware of the existence of Ex.P7 documents and the General Power of Attorney executed by Krishnan and others in favour of defendant No.10. The plaintiff has raised such contentions only at a belated stage when the case is posted for cross-examination of DW3. It is contended that the present application is filed only with an intention to drag on the proceedings and harass the defendant. Hence, the defendant has sought dismissal of the application with exemplary costs.

POINT FOR CONSIDERATION

- 1. Whether the plaintiff has made out sufficient grounds to recall DW1 for further cross-examination under Order XVIII Rule 17 of CPC?*

FINDINGS

My finding to the above point is in the Affirmative for the following reasons:

The present suit is filed by the plaintiff seeking relief of specific performance of contract. The plaintiff has disputed the genuineness and binding nature of the agreement to sell and General Power of Attorney marked in evidence. The said documents are stated to be executed in favour of defendant No.10 and the validity and effect of the said documents are matters directly connected with the controversy involved in the suit.

The purpose of Order XVIII Rule 17 of CPC is to enable the Court to recall a witness whenever such recall is necessary for clarification or for proper adjudication of the dispute. The power has to be exercised cautiously and not to fill up lacunae in the evidence.

In the present case, the plaintiff seeks recall only for the limited purpose of cross-examining DW1 regarding the execution, nature and effect of Ex.P7 documents. The questions sought to be put are relevant to the issues involved in the suit and would assist the Court in arriving at a proper conclusion.

The contention of the defendant no.10 that the plaintiff had knowledge about the documents and therefore cannot seek recall cannot be accepted at this stage, since the relevancy and effect of the documents are matters to be appreciated after completion of evidence. Further, no prejudice will be caused to the defendant if an opportunity is given to the plaintiff to further cross-examine DW1. The defendant can be compensated by granting reasonable opportunity to defend the case.

Therefore, in the interest of justice and for effective adjudication of the matter, DW1 deserves to be recalled. The application filed by the plaintiff under Order XVIII Rule 17 of CPC has merits and deserves to be allowed.

ORDER

The application filed by the plaintiff under Order XVIII Rule 17 of CPC is hereby allowed with cost of Rs.500/-.

DW1 is recalled for the limited purpose of further cross-examination by the plaintiff with regard to Ex.P7 agreement

to sell and General Power of Attorney and other connected aspects.

The plaintiff shall complete the cross-examination of DW1 on the next date of hearing without seeking unnecessary adjournments.

Put up On 14-07-2026

*(Dictated to the Stenographer on computer, typed by her, revised, corrected and then pronounced by me in the open Court on this the **23rd day of June, 2026.**)*

Sd/-

***Prl. Senior Civil Judge & J.M.F.C
Devanahalli.***