

**ORDER ON APPLICATION U/O 18 RULE 17 OF CPC FILED
BY THE PLAINTIFF**

The advocate for Plaintiff filed IA u/O 18 Rule 17 seeking to recall the case to the Cross of DW.1. In his support he filed affidavit.

2. The defendant filed objection and prays to reject the application as per the grounds urged by him in his objections.

3. Heard the counsels and perused the materials on record.

4. Following points arise for consideration of this court:

1. Whether the defendant has made out grounds to allow the IA u/O 18 Rule 17 of C.P.C.?
2. What Order?

5. The finding of this court to the above framed points are as follows:

1. Point No.1: In the Affirmative
2. Point No.2: As per the final order for the following

REASONS

6. **Point No.1:** The plaintiff filed the application stating that on the previous date he was not able to appear before the court and he was not able to contact his counsel as he lost his Mobile Number of counsel. So in his absence cross of DW.1 was taken as Nil and posted the case for arguments. The party approached the court on 13.12.2024 and sought time for filing of recall of DW.1 for cross examination and as the court granted permission. He filed application on 16.12.2024. If

the application is allowed no harm and hardship will be caused to the defendant. Hence, prays to allow the application.

7. The defendant in his objection contended that the plaintiff filed the application at belated stage and the reasons assigned by the plaintiff are false. The plaintiff has not shown sufficient grounds to allow the application.

8. In the present case the perusal of the order sheet shows that DW.1 was examined on 22.03.2024 and there after on the next date i.e., 30.03.2024 the DW.1 was absent. On 19.04.2024, 25.04.2024, 30.05.2024, 17.08.2024, 24.09.2024, 25.10.2024, 11.11.2024 and 16.11.2024 on all these occasions the plaintiff failed to cross examine the DW.1. As such the cross of DW.1 is taken as Nil on 16.11.2024. Thereafter the case was posted for arguments on 25.11.2024 and 09.12.2024.

9. On 16.12.2024 the plaintiff filed the present application seeking recall the DW.1 for his cross examination. It appears that the plaintiff has taken many opportunities to cross examine the DW.1 as mentioned above. But when the case was posted for arguments the present application came to be filed.

10. The plaintiff further in his affidavit stated that due to his ill-health he was not able to contact his counsel. But he is not produced any medical certificate to backup his claim. Apart from stating on affidavit about ill-health the plaintiff has not produced any documents. As already sufficient opportunity granted to the plaintiff to cross examine the DW.1. Despite that this court is of the considered opinion that granting one more opportunity to the plaintiff to cross examine

the DW.1 will cause no hardship or loss to the defendants. Per contra, if the application is not allowed then injustice or harm will be caused to the plaintiff. Hence, this court proceed to answer **point No.1 in the Affirmative.**

11. Point No.2: As per the reasons mentioned above this court proceeds to pass the following:

ORDER

IA filed by the defendant under Order 18 Rule 17 of CPC is allowed as prayed for on cost of Rs. 500/-.

For cross of DW.1 by 13.01.2025.

Sd/-

**C/C Addl., Civil Judge & JMFC.,
Doddaballapura.**