

KABR610000952015



**IN THE COURT OF THE III ADDL CIVIL JUDGE & JMFC.,
NELAMANGALA.**

Dated this the 25th day of November, 2023

Present: Dr. Chandini.N. B.A.L., LLB., LLM., Phd.,
C/C III Addl. Civil Judge and J.M.F.C.
Nelamangala.

O.S.No.14/2015

Plaintiff:

M/s. Ganesh Metal Works,
51, 1st Main Road,
Ramachandrapuram,
Bangalore- 560021.

Represented by its,
Proprietor Sri. N.S. Narayan,
S/o. Late N. Shanmugam Pillai,
Aged about 63 years,

(By Sri. R.V.K, Advocate)

V/s

Defendants:

1. M/S. Karthik Roofings and Structural Private Limited,
No.76, Byraveshwara Industrial,
Estate Entrance, Andrahalli,
Main Road, Peenya 2nd Stage,

Bangalore – 560 091.

A Company Registered Under,
The Companies Act, 1956,
Represented by its
Managing Director,
N. Shiva Kumar.

(Sri. S.S, Advocate for defendant)

PARTIES IN IA.NO.10 and 11

Applicant: M/S. Karthik Roofings and Structural Private Limited,

V/s

Opponent: M/s. Ganesh Metal Works Private Limited,

COMMON ORDERS ON IA.NO.10 AND 11

The defendant has filed I.A.No.10 Under section 151 of Civil Procedure Code praying to reopen the case for defendant evidence. The defendant has filed I.A.No.11 Under order 18 Rule 17 R/w. Sec. 151 of Civil Procedure Code praying to recall the defendant evidence and to permit him to lead further evidence.

2. In the annexed affidavit it is stated that this suit is filed by the plaintiff against the defendant for the relief permanent injunction, damages and other consequential

relies against the defendant. It is further submitted that after hearing the plaintiff this court has issued notice to the defendant. It is submitted that after the service of notice, the defendant has filed the written statement and this court has framed issues in the said matter and posted the case for plaintiff evidence and thereafter the plaintiff has examined himself as Pw1 and got marked several documents. It is submitted that pursuant to marking of documents the matter was posted for cross examination of PW1. It is further submitted that thereafter defendant counsel has fully cross examined Pw1 on 11.10.2017 and thereafter since the plaintiff prayed time for the evidence of plaintiff. On 12.06.2019, since the witness remained absent, this court took the further evidence of plaintiff as nil and posted the matter for defendant evidence on 30.09.2022. It is further submitted that on the above said date the defendant filed his affidavit and the case was posted on 30.09.2022 for further chief of Dw1. Since the defendant was not keeping well, defendant requested the counsel to seek an adjournment in the matter and since defendant counsel was held up in a matter in Bangalore, he could not appear and seek time for the non-appearance and hence this court took the further chief of DW1 as nil and posted the matter for cross examination of

Dw1 on 13.10.2022, the said fact of closing defendant further evidence was intimated by defendant counsel and further had asked defendant to come to office to prepare a recall and reopen application. But unfortunately defendant wife become unwell and as a result, the defendant had to move around the hospital along with defendant's wife for treatment and further in view of the same, the defendant could not visit defendant's counsel office and take steps to file the instant application. It is further submitted that in view of the above, when the matter was posted for defendant cross examination on 16.11.2022. The defendant could not appear and as a result, this court considering defendant non-appearance was pleased to take the cross examination of Dw1 as nil and presently the matter is posted for arguments. Hence this application to reopen the stage of defendant further chief examination. It is submitted that non-leading of evidence on the fixed date of hearing is neither intentional nor deliberate and because of the bonafide reason as stated supra. The defendant submit that, the defendant has got a good case on merits and if this application is not allowed. The defendant will be put to great hardship and irreparable loss and injury and on the other hand no prejudice or loss

would be caused to the plaintiff if this application is allowed.

3. The plaintiff has filed common objections to these applications stating that at the outset the above application filed by the defendant is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The application is filed in order to stall the proceedings of the case and in order to mislead this court. As such the application is liable to be dismissed.

4. The application is also liable to be dismissed on the ground that as it was filed at a belated stage. The present application is filed with a sole intention of drag on the proceedings of the case and not otherwise as the stage of the case is posted for further arguments on main.

5. It is further submitted that It is falsely alleged that the defendant was not keeping well on 30.09.2022 and as such his counsel requested to seek adjournment and as his counsel was held up in Bangalore he could not appear and seek time for further chief. It is also further false to allege that as the defendant's wife become unwell he could not contact his counsel for filing recall the

application. It is to be noted that similar application was filed on behalf of defendant when the defendant evidence was closed on 15.02.2022. In the said application also similar grounds were urged by assigning health grounds. It is to be noted after the matter was posted for arguments on 25.11.2022, 06.12.2022 and 03.01.2023, the defendant has not chosen to file application for recall the order dated 30.09.2022 and there is no explanation from the defendant why he has not file the application for recall the order on the above said dates. Apart from that there are no documents produced before this court with regard to the health issues of defendant and his wife. As such the grounds urged for recall the order cannot be believable one. Hence, on this score itself the application is liable to be dismissed. On other words it is nothing created story of the defendant not otherwise. It is to be noted that after taking several adjournment for further examination, this defendant has filed these applications.

6. Based on the rival contentions of the parties the points arise for my consideration are as follows:

1. Whether the defendant has made out grounds to allow these applications as prayed for?

2. What order?

7. Heard both sides. Perused the materials placed on record.

8. My findings to the above points are as follows:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following;

REASONS

9. **Point No.1:** On perusal of records it appears that the plaintiff has filed this suit for permanent injunction. The defendant has filed these applications submitting that due to health issues he was not able to lead his evidence on the hearing dates. On the other hand, formal objections are filed by the plaintiff.

10. On perusal of order sheet, it is noticed the defendant has filed these applications at the stage of arguments. Admittedly, these applications are filed at a belated stage. Though the reasons are not satisfactory and no documents are produced. However, every opportunity must be given to the defendant to prove his case. Further the burden of proving his defense is on

the defendant. Therefore, in the interest of justice, this court is of the opinion that these applications deserves to be allowed. However for the delay the defendant must be saddled with cost. Hence, this court is of the opinion that the defendant has made out grounds to allow the I.A.No.10 and 11. Hence I answer the Point No.1 in the Affirmative.

11. Point No.2: As per the final order for the following:

ORDER

IA.No.10 filed by the defendant Under section 151 of Civil Procedure Code and I.A.No.11 filed by the defendant U/o. 18 Rule 17 R/w. Sec.151 of CPC is hereby allowed.

The stage is reopened and Dw-1 is recalled.

For further chief of Dw-1 by 08.01.2024.

(Dictated to Stenographer, transcribed and typed by her, corrected, signed and then pronounced by me in the open court this the 25th day of November, 2023)

Sd/-
C/C III Addl. Civil Judge & JMFC.,
Nelamangala.