

OS 406/2014

It is noticed that on the previous hearing date this court has wrongly mentioned I.A.No. X and XI filed by defendants for further chief of DW-01, instead of I.A.No. X and XI filed by plaintiff to recall the DW-01 for cross examination.

It is also noticed that the objections filed by the plaintiff to the memo has been taken as objections to I.A.No. X and XI, instead of objections to memo filed by defendants. The same is hereby rectified.

ORDER ON MEMO DATED

26.09.2019.

The advocate for defendant No. 5 and 7 to 9 has filed memo to discard the evidence of DW-02.

Upon service of copy of memo on plaintiff, the advocate for plaintiff has filed objections to memo contending that the DW-2 who is defendant No. 7 has voluntarily examined before this court and now on the advice of defendant No.

9 and by miss guiding the DW-2 by suppressing the material facts has got filed present memo to discard the evidence of DW-2.

Heard both the counsels and perused the memo and materials available on record.

It is left to the parties to lead evidence or not and this court can't compel parties to adduce evidence. It is parties interest lead evidence to prove the burden placed upon them as per Indian Evidence Act. If the party fail to discharge is burden, he will face the consequence as per Indian Evidence Act. Therefore, the memo is liable to be accepted. Accordingly to this court proceed to pass the following:-

ORDER

The memo filed by the advocate for defendant No. 5 and 7 to 9, is hereby accepted.

The evidence of DW-2 is hereby discarded at the cost and risk of defendant No. 7.

Addl. Civil Judge and JMFC.
Hosadurga

ORDER ON I.A No. X and XI

The advocate for Plaintiff has filed I.A.No. X U/sec. 151 of CPC to reopen the case for further cross of DW-1 and I.A.No. XI U/o. 18 rule 17 R/w. Sec. 151 of CPC to recall DW-1 for further Cross examination, in the interest of justice and equity.

Advocate for defendants did not file objections.

Heard both sides and perused the I.A.No. X and XI and materials placed on record.

On perusal of the records it reveals that the plaintiff has cross examined the DW-1 in part and further cross of DW-01 by taken as nil. On satisfying with the reason assigned in the I.A.No. X and XI and in the absence of any objections, it is necessary to accord an opportunity to cross examine DW-1 and to establish the case of the plaintiff. The delay in filling the I.A.No. X and XI can be compensated by awarding cost.

Accordingly, this court proceed to pass the following:-

ORDER

The I.A.No. X U/sec. 151 of CPC to reopen the case for further cross of DW-1 and I.A.No. XI U/o. 18 rule 17 R/w. Sec. 151 of CPC to recall DW-1 for further Cross examination, filed by the plaintiff, are hereby allowed on cost of Rs. 100/- each.

The case is reopened for further Cross of DW-1 and the DW-1 is hereby recalled for further cross examination of DW-01.

For F/X/DW-01.

Call on

Addl. Civil Judge and JMFC.
Hosadurga