

**ORDERS ON I.A. NO. VII AND VIII FILED BY THE  
PLAINTIFF**

I.A.No.VII filed by plaintiff U/Sec. 151 of CPC to reopen the case and filed I.A.No.VIII for recall DW-1 for further cross examination of D.W.1.

2. On the other hand, the defendant filed common objection to IA No.VII and VIII by denying all the averments made in the affidavit annexed to the applications and pray to dismiss the applications.

3. Heard both side and perused the materials on record.

4. The following points arises for my consideration.

1) Whether plaintiff has made out grounds to allow IA No.VII and VIII?

2) What order?

5. Heard on IA No.VII & VIII by both side

6. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : As for the following:

### **REASONS**

7. **Point No.1:** Plaintiff submitted that defendant has been examined himself as DW-1 and he has been partly cross examined on 16/12/2024 and the matter was posted to 18/01/2025 for further cross examination of DW-1. On 18/01/2025 the P.O was on leave and the matter posted on 25/01/2025 and on the said date DW-1 was absent and cost was imposed on defendant and the matter posted to 01/02/2025. On the said date the advocate on record partially cross examined and the advocate is based on Bengaluru could not come to Mudigere since the said Saturday was a sitting day for Hon'ble High Court and several matters were listed owing to which the counsel could not come to Mudigere and on the said date the counsel based on Mudigere requested time to cross examine DW-1 and cross examination of DW-1 taken as nil by this court and the matter was posted for further evidence of defendant. The plaintiff stated that

the counsel did not make the application since the matter was posted for further evidence and he was under the impression that if the defendant does further evidence thereafter the opportunity will be provided and accordingly immediately the present application was not filed for aforesaid reasons. The defendant submitted that he has no further evidence and accordingly the matter was posted for arguments. Plaintiff stated that the cross examination of DW-1 is very much essential and even some of the documents were confronted to defendant. Hence plaintiff prayed to allow the applications.

8. On the other hand defendant filed common objection to I.A.No.7 and 8. In the objection defendants stated that the present application is filed by plaintiff only to drag on the proceedings. Though the counsel for plaintiff present before the court not cross examined DW-1 only to drag on the proceedings. Hence defendant prays to rejected the application.

9. On perusal of the records it reveals that, when the matter is posted for arguments plaintiff has filed the present application for reopen the case and recall of DW-1 for cross examination. It is the principle that wide opportunity should be given to the parties to prove their case in the trial court itself. If the IA No.VII and VIII are allowed no hardship will be caused to defendant. The inconvenience caused to defendant can be compensated by imposing cost on plaintiff. Therefore, to avoid multiplicity of proceedings I inclined to allow the application filed by plaintiff. In view of my above discussion I answer point No.1 in the Affirmative.

10. **Point No. 2:** In view of my findings on point No.1 I proceed to pass the following:

**ORDER**

I.A.No.VII and VIII filed by plaintiff for reopen the case and recall DW-1 is hereby allowed on costs of Rs.200/- each.

Case reopened, DW-1 recalled. Case posted for cross examination of DW-1.

Call on : 24/03/2025.

(JAYAPRAKASH V.)  
SENIOR CIVIL JUDGE AND JMFC.  
MUDIGERE.