

ORDERS ON I.A.NO.III FILED BY THE PLAINTIFF

I.A.No.III filed by the plaintiffs U/o XVI rule 1(3) of CPC to issue summons to the witness stated in the application.

2. On the other hand, the defendants filed objection to IA No. III by denying all the averments made in the memorandum of facts annexed to the application. Defendants prays to reject the application.

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

4. The following points arises for my consideration.

1) Whether the plaintiff has made out grounds to allow IA No. III?

2) What order?

5. Heard on IA No. III 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:** It is submitted by the plaintiffs that the above case is posted for the further evidence of the plaintiff. The plaintiff earlier could not file the witness list due to inadvertence and bonafide mistake. He want to examine the witness detailed in the application. The said witnesses are conversant with the facts of the case. It is further stated that plaintiff will be put to great hardship, loss, injury and injustice if the application is not allowed.

8. On the other hand, defendants have filed objection to IA No.III. In the objection the defendants stated that the application filed by the plaintiffs is not maintainable either in law or on facts. The application is not supported by affidavit in terms of Rule 18(2) of Karnataka Civil Rules of Practice, 1967 and hence the application is not maintainable. Not filing the list of witness with in the stipulated time cannot be allowed/condoned without there being valid reasons and good grounds. The application is highly belated as it has been filed after the conclusion of the evidence of the plaintiffs. The intention behind the filing of the present application is to fill up the loophole and lacuna brought out in the cross examination of the plaintiff No.3 (PW1). Filing of witness list within 15 days of the framing of issues is mandatory as per 0.16 R 1(1)

of CPC and the plaintiffs have not at all filed the list of witness in the above suit within the said period. Without filing the said list of witness as per order 16 Rule 1(1) of CPC, how the plaintiffs could resort to order 16 R 1 (3) of CPC is not understandable. There is no sufficient cause as required U/O 16 R 1(3) of CPC has been shown. The role of the proposed witnesses is not speltout in the plaint or in the evidence put-forth by the plaintiff No.3 (PW.1). The plaintiffs have no right to bring the witness of their choice and desire and examine them before the court as and when they choose. The application is filed to protract the proceedings and there by defer justice to the defendants. Defendants further stated that the evidence of said witnesses is not off any help to reserve the real controversy between the parties. Hence, defendants prays to reject the application filed by the plaintiff.

9. On perusal of the records it reveals that, plaintiff has filed the suit for Specific performance of contract. When the matter is posted for further evidence of plaintiff he came up with present application for issue summons to the witnesses. It is the principle that widest opportunity should be given to the parties to prove their case in the trial court itself. If the IA No.III is allowed no hardship will be

caused to the defendants. The defendants have every right to cross-examine the witness. The delay in filing the application and the inconvenience caused to defendant can be compensated by awarding cost. Therefore, to avoid multiplicity of proceedings I inclined to allow the application filed by the plaintiffs. 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.III filed by the plaintiff U/o XVI rule 1(3) of CPC is hereby allowed on costs of Rs.200/- each.

Issue summons to the witnesses if PF paid case posted for further evidence of plaintiffs.

Call on : 23.07.2024.

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