

ORDER ON IA NO.22

The present IA filed by the counsel for defendant No.1 filed application U/Sec. 151 of CPC with a prayer to reopen the case for cross-examination examination of DW-3 & DW-4. Along with application defendant No.1 filed hid affidavit, in the affidavit it is stated that he suffering from unbearable pain and even unable to move about independently. Hence, he could not pay much concentration and attention towards this litigation. In the meanwhile the DW-3 was cross-examined on behalf of defendant no.2 only. However, DW-3 & DW-4 were not subjected to cross-examination on his behalf. Since, he was in a distress condition and he could not come and furnish required instructions to his counsel to cross-examine the DW-3 & DW-4. Further, very recently he came to know the technical defect taken place and advised in this behalf and reason for delay caused in this behalf is genuine and bonafide in nature. Further, there is no prejudice will

be caused to plaintiff and otherwise he will be put to hardship and legal injury. The balance of convenience and relative hardship weighs in his favour only and prays to allow the application.

Per contra advocate for the defendant No.2 opposed the application by way of filing objection. In the objection it is contended that, application is not maintainable either in law or facts and defendant No.1 has not assigned sufficient cause or reason in support of the present application and no bona-fides urged in support of the application. Further, the defendant No.1 has not shown any interest in prosecuting the case, so far, but approached this Court with deliberate intention of dragging the proceedings of the case and the present application is highly belated one and on other grounds prays for dismissal of the application.

Heard arguments of both the parties and perused the materials placed on record.

Further, perused the application and affidavit filed by the defendant No.1 and by considering the reasons assigned in the affidavit, it is just and proper to permit the defendant No.1 to cross-examine the DW-3 & DW-4. However, due to the delay caused by the defendant No.1, the parties unnecessarily suffered delayed proceedings and hence he should compensate properly. The present application is hereby allowed by imposing cost of Rs.200/- each, which is payable to DW-3 & DW-4.

For further cross of DW-3 & DW-4 by
17-12-2025.

Prl. Senior Civil Judge & CJM,
Davanagere.