

14-10-2024

ORDERS ON I.A.Nos.9 AND 10

The learned counsel for the plaintiff has filed I.A.No.9 under Order XVIII Rule 17 and Sec.151 of C.P.C. and I.A.No.10 under Section 151 of CPC to recall PW.1 and to re-open further cross examination of PW.1.

2. In the affidavit annexed to both the applications it is contended that, the plaintiff is suffering from left side stroke and undergone for treatment in Narayana Multi Special Hospital, HSR Layout, Bengaluru. Hence, he could not attend before the court for his further cross examination and this court was taken the further cross of PW.1 as nil. The absence of the plaintiff was neither intentional nor deliberate. If the present applications are not allowed, plaintiff will be put to irreparable loss and hardship. Hence, prayed to allow the applications.

3. On the other hand, counsel for defendant has filed common objection by denying the affidavit averments and stated that, the present applications are false, frivolous, vexatious and unsustainable both at law and on facts of this suit. Plaintiff has not made out any ground to allow the applications. Only to harass

the defendant, the present applications have been filed. PW.1 has not produced any medical documents to prove his contentions. Hence, prayed to dismiss the applications with cost.

4. Heard and perused.

5. Now the points that arise for consideration are as follows;

1. Whether the applications deserve to be allowed?

2. What order?

6. My answer to the above points are as hereunder:

Point No.1: In the Affirmative

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

REASONS

7. **Point No.1:-** It is borne out from the record that, when the case posted for defendant's evidence, plaintiff has come up with these applications stating that, he is suffering from left side stroke and undergone for treatment in Narayana Multi Special Hospital, HSR Layout, Bengaluru. Hence, he could not attend before the court for his further cross examination. But defendant is opposing the

same. The grounds in the affidavit cannot be a sufficient cause to reopen the case and to recall PW.1. However, if the plaintiff is not given a fair opportunity to tender himself for further cross-examine, he will be put to great hardship. Soon after the court has taken the cross-examination of PW.1 as nil, the applications for reopening the case and to recall PW.1 have been filed. Therefore, bonafides are made out and I.As are deserve to be allowed. Accordingly, this court answer the **point no.1** in the **Affirmative**.

8. **Point No.2:-** In view of the above discussion, this court proceed to pass the following:

ORDER

I.A. No.9 filed under Order XVIII Rule 17 and Sec.151 of CPC and IA No.10 filed under Sec.151 of CPC by the plaintiff are hereby allowed.

Case of the plaintiff is reopened and PW.1 is recalled for the purpose of further cross-examination.

For further cross of PW.1.

Call on **17.12.2024**

Sd/-
Civil Judge and JMFC,
Moodbidri

