

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt.Deepa G Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 01st day of December 2025

O.S. No.518/2023

Vidyavati W/o Basavaraj Kiragi
D/o Narayanappa Wadagavi @ Vadagavi
Currently residing at 1183, Blackberry Terrace
AT: Sunnyvale, CA, Zip Code-94087, USA
and others

...Plaintiff/s

-Versus -

Venkatesh S/o Narayanappa Wadagavi @ Vadagavi
of Hubballi

...Defendant/s

IA.No.V

Vidyavati W/o Basavaraj Kiragi
D/o Narayanappa Wadagavi @ Vadagavi and others

APPLICANT/ PLFFS

Versus -

Venkatesh S/o Narayanappa Wadagavi @ Vadagavi
of Hubballi

OPPONENT/ DFT.NO.1

:: ORDERS ON IA. NO.V FILED UNDER
SEC.151 OF C.P.C ::

The present I.A. has been filed by the plaintiffs to discard the evidence of P.W.1 and to permit the plaintiff No.4 to lead plaintiff evidence.

2. In the memo of facts annexed to the present IA it is stated that, this Hon'ble Court was pleased to permit the transposition of defendants Nos.2 to 5 as plaintiffs Nos.2 to 5. That, prior to such transposition the original plaintiff No.1 had recorded her examination-in-chief but she was not yet subjected to cross-examination. However, plaintiff No.1 is unable to appear for cross-examination since she is residing in the United States. That, it will be feasible for the plaintiffs if this Hon'ble Court discards the examination-in-chief of plaintiff No.1 and instead permits plaintiff No.4 to lead evidence on behalf of all the plaintiffs afresh. As it can be seen from the written statements filed earlier by defendants Nos.2 to 5 prior to transposition as plaintiffs Nos.2 to 5, they have

supported the case of the plaintiff No.1. On this ground such transposition was also permitted. In fact, the pleadings of the present plaintiffs/defendants earlier prior to transposition, are exactly similar and the only contesting party is defendant No.1 plaintiff No.1 resides in Sunnyvale, California, USA, and as such it will involve huge expenses for her to come all the way to tender herself for cross-examination. No irreparable loss, damage or harm shall be caused to defendant No.1 if P.W.1 evidence is discarded. Moreover, in this case, it is P.W.1 herself who seeks to have her evidence discarded since she is unable to appear for cross-examination. The discretionary powers of this Hon'ble Court are wide enough to grant the reliefs prayed for. Hence, prayed to allow the application.

3. The counsel for defendant No.1 has filed objections to the present I.A., contending that the application is false, frivolous and vexatious the same is not tenable in law. The application is filed to discard the

evidence of PW.1 and for seeking permission to lead evidence. If the application is allowed the procedure would be anti clock wise hence the application deserves to be dismissed. The application is filed only with an intention to drag on the proceedings and to harass this defendant. Therefore, the application requires to be dismissed. Hence, prayed to reject the I.A.

4. The points that arise for my consideration is:-

1. Whether the present application deserves to be allowed?

2. What Order ?

5. Heard arguments on both sides counsels.

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

Point No.1 : In the Negative.

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

:: R E A S O N S ::

7. **Point No.1:** The plaintiffs have pressed into service on the present I.A. to discard the evidence of PW1

and permit plaintiff No.4 to lead evidence on the ground that PW1 is unable to appear for cross-examination as she is residing in United States and it involves huge expense for her to come all the way to tender herself for cross-examination. It is also the claim of plaintiffs that in the written statement filed by defendant No.2 to 5, who are now transposed as plaintiff No.2 to 5, they have supported the case of plaintiffs and as such transposition was permitted as such the evidence of plaintiff No.4 can be permitted to lead evidence. The present IA is resisted on the ground that if the application is allowed it would be anti-clockwise trial hence application deserves to be rejected. That the present IA is filed when the matter is posted for cross examination of PW1. Though the permission has been sought by the counsel for plaintiffs to lead evidence of plaintiff No.4 by discarding evidence of PW1, there is no provision in CPC to discard the evidence of any witness. The said evidence would be on record and what value has to be attached to the said evidence in the

absence of cross-examination can be considered only at the time of deciding the case. Non-appearance of PW1 for inconvenience or loss which would cost to her cannot be the ground to discard the evidence of PW1 which is already lead on oath. However the evidence of PW1 cannot be discarded as such the present application is liable to be rejected accordingly point No.1 answered in the **Negative**.

8. **Point No.2:-** In view of my findings on point No.1, this court proceeds to pass the following:

O R D E R

I.A.No.V filed by the counsel for plaintiff
under Section 151 of CPC is hereby rejected.

(Dictated on AI Adalath, corrected by stenographer, verified by me, and then pronounced in the open court on this the 01st day of December 2025.)

Sd/-
(Smt. Deepa G Manerkar)
II Addl. Senor Civil Judge and JMFC
Hubballi.