

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

MVC No.94/2024

Dated this the 04th day of May, 2026

Petitioner : Amogh S/o Sadanand
Kallayyanamath.

.Vs.

Respondent : Mohit S/o Hirachand Dand.

PARTIES TO I.A. No.III TO V

Applicant/s : Amogh S/o Sadanand
Kallayyanamath.

.Vs.

Opponent/s : Mohit S/o Hirachand Dand.

- i. Provision under which : I.A. No.III – U/Sec.151 of
application is filed CPC.
I.A. No.IV – U/o.16 Rule 3 of
CPC
I.A. No.V – under Order XVIII
Rule 17 R/w Sec.151 of CPC.
- ii. Relief sought for : Seeking to re-open and recall
the P.W.2 for the purpose of
further evidence and further

seeking to summon the Doctor i.e., Dr. Vivek Patil to lead his evidence and cross examination as P.W.2.

- iii. The date on which : 22.01.2026 application is filed*
- iv. Number of the : III to V application*
- v. The date on which : 05.02.2026 objections are filed by different opponents*
- vi. The date on which : 04.05.2026 orders were passed on the said application*

COMMON ORDERS ON I.A No.III TO V

The counsel for the petitioner has filed I.A. No.III to V under Sec.151 of CPC, under Order 16 Rule 3 of CPC and under Order XVIII Rule 17 R/w Sec.151 of CPC, seeking to re-open and recall the P.W.2 for the purpose of further evidence and further seeking to summon the Doctor i.e., Dr. Vivek Patil to lead his evidence and cross examination as P.W.2.

- 2. The respondent has filed objections to these I.As.*
- 3. Heard arguments.*
- 4. The points for consideration are:*
 - 1. Whether the reliefs sought by the petitioner in the applications, can be granted ?*
 - 2. What order ?*

5. *The above point No.1 is answered in the Affirmative and point No.2 as per final order, for the following:*

REASONS

6. **Point No.1:** *In the annexed affidavit, the counsel petitioner averred that, soon after the plaintiff evidence, due to medical emergencies he was not able to bring in the medical practitioner / doctor to lead his evidence and there are several true and vital facts, to bring to the Courts notice. For the complete and proper adjudication to be done in the petition and in the interest of natural justice may be given an opportunity to lead his evidence as P.W.2 as filed before this Court. Hence, prayed to allow the applications.*

7. *On the otherhand, the counsel for the respondent filed objections and contending that the present application is not maintainable either in law or on facts, and the same is filed only with an intention to delay the proceedings and to fill up lacunae in the petitioner's case after closure of evidence. The petitioner's evidence has already been closed after granting sufficient opportunities, and the matter has progressed to the advanced stage of trial. The petitioner, having consciously closed evidence, cannot be permitted to reopen or recall a witness at their convenience. The application is filed under Order XVI Rule 3 CPC, which*

only deals with the mode of summoning witnesses and does not confer any right to recall or re-examine a witness whose evidence is already concluded. The petitioner has not disclosed any valid, cogent or exceptional reason for recall of PW-2. No explanation is offered as to why the alleged evidence was not adduced earlier, despite the witness already being examined. The Courts have consistently held that recall of a witness cannot be permitted for the purpose of filling gaps, improving the case, or correcting defects in evidence already led, especially after closure of evidence. The petitioner is attempting to introduce fresh medical evidence through recall, which would prejudice the respondent and amount to granting the petitioner an unfair second opportunity, contrary to settled principles of trial.

8. *It is further contended that the application is silent on the specific points on which recall is sought, thereby revealing that the petitioner is on a fishing and roving enquiry, which is impermissible in law. When sufficient opportunity was granted to the petitioner, the petitioner voluntarily waived his right and closed his evidence. Despite being afforded repeated opportunities, the petitioner failed to avail the same and has now filed the present application seeking recall, which clearly demonstrates an intention to unnecessarily delay and*

prolong the proceedings. The petitioner has failed to demonstrate that recall of P.W.2 is essential for just decision of the case. Mere convenience or desire to strengthen one's case cannot be a ground for recall. The present application is filed belatedly, without any bona fide reason, and solely to protract the proceedings, causing unnecessary harassment and financial burden to the respondent. Hence, prayed to dismiss the applications.

9. *On perusal of the entire materials available on record it is noticed to the Court that admittedly this is the petition for compensation, when the matter has been set down for respondents evidence, the petitioner came up with these applications seeking above said relief. The petitioner has filed applications for reopening of the case, for permission to lead further evidence, and to summon the doctor as a witness. The respondents have filed objections contending that sufficient opportunities were already granted and that the present applications are vague, belated, and intended to fill up lacuna. On perusal of the petition, Record. It is evident that the applications are filed at a belated stage and thereafter remained un-prosecuted for a considerable period of time. The prayer seeking recall of PW2 is misconceived as no such witness has been examined before this court. The application does not disclose complete particulars of*

*the proposed witness. Including the hospital and address, which reflects lack of diligence. Ordinarily, such conduct would not entitle the petitioner to any indulgence. However, considering that the proceedings arise out of a motor vehicle accident claim and in order to afford a fair opportunity to substantiate the claim, this Court deems it appropriate to grant one final opportunity subject to stringent conditions. Hence applications deserves to be allowed on payment of cost to compensate the delay to other side. Hence, I answer the **point No.1 in affirmative.***

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

ORDER

The I.A. No.III to V filed by the petitioner under Sec.151 of CPC, under Order 16 Rule 3 of CPC and under Order XVIII Rule 17 R/w Sec.151 of CPC are hereby allowed on payment of cost of Rs.500/- only to the extent of permitting the petitioner to lead further evidence.

The petitioner is directed to file a memo within 7 days from the date of this order, furnishing complete name of the doctor, full address and hospital details,

nature and relevance of the proposed evidence.

The petitioner shall take necessary steps for summoning the witness within seven days thereafter without fail.

The petitioner shall ensure the presence of the witness on the date fixed for evidence. No adjournment shall be granted on any ground.

If the petitioner fails to comply with the above directions, the permission granted herein shall stand automatically vacated without further reference to the court, The prayer for recall of PW2 is rejected as not maintainable.

*Call on for cost and steps,
by:11.05.2026.*

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **04th day of May, 2026**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*