

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

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

Dated this the 30th day of June 2026

O.S. No.440/2024

Sri. Ramachandra P. S/o Rajaram

...Plaintiff/s

-Versus -

Smt. Shakuntala W/o Siddalingappa Menasinkai
and another

.....Defendant/s

:: IA.No.VII AND VIII::

Smt. Shakuntala W/o Siddalingappa Menasinkai
and another

APPLICANT/ DEFT-1

Versus -

Sri. Ramachandra P. S/o Rajaram

OPPONENT/ PLAINTIFF

**COMMON ORDERS ON I.A.NO.VII AND VIII FILED
BY THE DEFENDANT NO.1 UNDER SEC.151 OF CPC**

I.A. No.VII has been filed under Sec.151 of CPC by the counsel for defendant No.1 to re-open the case and IA No.VIII has been filed U/Sec.151 of CPC to permit the defendant No.1 to cross examine PW.1 by setting aside the order dt:11-02-2026.

2. In the memo of facts annexed to the present IAs it is stated that the above case is posted for defendant evidence. The matter was posted for cross-examination of PW1 on 11-02-2026 but the compromise talks were going on between the parties to the suit and as such the counsel for defendant No.1 could not cross examine the said witness on the day fixed. Now as per the instructions of defendant No.1 it has become necessary to cross examine the said witness. There are material and important facts to be suggested to the witness by way of cross-examination. There was no deliberate or intentional lapse on the part of defendant No.1 or his counsel. It was only due to bonafide reason. Hence it is just and necessary to reopen the plaintiff side evidence for cross-

examination of P.W.1 by setting aside the order dt:11-02-2026. Hence prayed to allow the applications.

3. The plaintiffs have filed common objections to I.A. No.VII and VIII and contended that the application filed by the defendant No.2 is false not maintainable in law. The statement made in affidavit accompanying to application is not true and correct. The defendant No.2 has filed the application for recall of P.W.1 for the purpose of cross-examination. However this court has given sufficient opportunity to defendant No.2 to cross examine the P.W.1. The defendant No.2 has failed to cross examine the P.W.1 and when the matter is posted for judgment then the counsel for the defendant No.2 filed this application just to delay the proceedings and to harass the P.W.1. The defendant No.2 has not come up with clean hands. Hence, he is not entitled for equitable relief from this court. The application is filed only to harass the plaintiff with malafide intention. Hence, prayed to dismiss the said IAs.

4. On the basis of rival contentions following the points that would arise for my consideration is:

:POINTS:

1. Whether the present applications deserves to be allowed?

2. What order?

5. Heard the arguments, perused the records, my answer to the above points is as follows:

Point No.1 : In the affirmative.

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

:: R E A S O N S ::

6. **POINT NO.1:** The present IAs have been pressed into service by the counsel for the defendant No.1 to reopen the case and to recall P.W.1 for cross examination. On the ground that, due to the compromise talks were going on between the parties the counsel for defendant No.1 could not cross examine the said witness on the day fixed. There are material and important facts to be suggested to the witness by way of cross-examination. Hence, it has become necessary to cross examine the said witness.

7. The main objections raised by counsel for plaintiffs that the present IAs is that the only with an intention to drag on the case. No doubt in the present case the present applications are filed when the matter is posted for judgement. However, the present suit is filed for the relief of specific performance of contract. However, it is well settled principle of law that lis has to be decided by giving opportunity to the parties to adduce or available evidence with them in support of their case. That the denial of opportunity should not be ground for remand of matter in appeal. Therefore, in order to afford one more opportunity to the defendant No.2 for cross examination of P.W.1 the present application is deserves to be allowed. So far delay caused to the other side is concerned, certain cost can be imposed. As such in order to meet the ends of justice the present applications deserve to be allowed on cost. Accordingly point No.1 is answered in the **affirmative**.

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

ORDER

I.A.Nos.VII and VIII filed by the counsel for the defendant No.1 under Sec.151 of CPC are hereby allowed on cost of Rs.500/- each.

As a result, case is reopened for further
cross examination of PW.1

(Direct dictated to stenographer on computer typed by her, corrected and signed by me & then pronounced in the open court on this the 30th day of June 2026.)

Sd/-
II Addl. Senior Civil Judge and JMFC
Hubballi