

OS 17 of 16 dated 27.03.2024

The present situation has arisen on account of the fact that the Counsel for the Defendant would submit that since PW.3 never appeared before the Court for cross examination the affidavit of PW.3 would have to be discarded before proceeding further in the case. The Hon'ble High Court in ***Radhakrishna Bhat Vs. Smt.Radha Hengsu*** reported in ***ILR 2003 KAR 3866***, has held as under:

4. There is no provision under the CPC or for that matter under any law as to the evidence already recorded can be expunged that too at the behest of party who has probably given different answer or admission especially in Cross-examination. In the present case P.W. 1 was examined and has also been cross-examined and it appears certain admissions have been obtained by the petitioner's Counsel while cross-examining. Since the evidence has been completed, even if

the answers are unpalatable to the party or her advocate, the evidence cannot be expunged that too when there being no provision for doing so and hence the impugned order passed for expunging the evidence already recorded by the learned Civil Judge is totally illegal and without Jurisdiction.

Therefore there is no concept of discarding the affidavit/evidence of any witness. It would remain on the record and the case would have to proceed. Therefore for cross examination of PW.2 call on 28.05.2024.

CJ HNPura.