

**Common Orders on IA Nos.V and VI i.e. applications filed under Section 151 of CPC and under Order 18 Rule 17 of CPC**

These applications have been filed by defendant No.1 seeking to reopen the case from the stage of further defense evidence and permit the defendant No.1 to cross examined PW.1, 2 and DW.1. In the affidavits annexed to these applications, it is stated that, the plaintiff has been examined as PW.1, PW.2 has been examined in support of the case of plaintiff and defendant No.2 has been examined as DW.1. Earlier the defendant No.1 has not cross examined PWs.1,2 and DW.1. After the judgment and decree in this case, the defendant No.2 had preferred appeal in the court of Hon'ble Senior Civil Judge and JMFC, Holenarasipura in RA No.67/2019. The said appeal came to be allowed and this suit has been remanded back. As the defendant No.1 could not cross examine them, the cross examination of PWs.1, 2 and DW.1 taken as nil. It is very much necessary that, they have to be cross examined. Otherwise, the defendant No.1 would be put to irreparable loss and injury. On these grounds it is prayed to allow these applications.

On the other hand, the plaintiff has filed objection by contending that, in RA No.69/2019 permission has been given to file written statement and to lead evidence to defendant No.1 by allowing the application filed by him. However, the defendant No.1 has not sought any such permission. The plaintiff has cross examined defendant No.1. The applications filed by the defendant No.1 are barred by limitation. It is not proper to give permission to defendant No.1 to cross examine them at this stage. No proper reasons assigned for delay in cross examining them. On these grounds, it is prayed to reject the applications.

Heard on both side. Perused entire record. The defendant No.1 has sought to reopen the case and recall PWs.1, 2 and DW.1. However, the plaintiff has raised objections to allow these applications and one such objection is that, the defendant No.1 has not taken permission to file written statement and lead evidence. However, it is to be noted here that, the Hon'ble Senior Civil Judge & JMFC, Holenarasipura in RA No.67/2019 has ordered by allowing the appeal filed by defendant No.1 herein that, "the trial court shall receive the pleadings and additional evidence if any from the parties to the suit and dispose off the matter

afresh in accordance with law". Therefore, by this it is clear that, by virtue of the said order, this court could receive any evidence even from defendant No.1. Hence, eventhough the plaintiff has raised objection, this court is of the view that an opportunity has to be given to defendant No.1 to cross examine PWs.1, 2 and DW.1 by allowing these applications. Otherwise, it will leads to multiplicity of proceedings and in turn delay in disposal of this case. The defendant No1 would be put to more hardship if these applications are dismissed. For all these reasons, this court is of the opinion that the applications have to be allowed. With these observation, this court proceed to pass the following:

**ORDER**

The applications i.e., IA No.V and VI filed by defendant No.1 under Section 151 of CPC and under Order 18 Rule 17 of CPC are hereby allowed.

The case is reopened and PWs.1, 2 and DW.1 are recalled for cross examination by defendant No.1.

For cross examination of PWs.1, 2 and DW.1 by 17.07.2025.

Civil Judge & JMFC  
Holenarasipura

