

**Orders on IAs No.28 & 29 U/s.151 of CPC  
and U/O 18 Rule 17 of CPC**

The defendants have filed these applications U/s.151 of CPC and U/O 18 Rule 17 of CPC and sought to reopen evidence of plaintiffs side and to recall PW.1 for the purpose of further cross examination.

2. The learned counsel for the defendants has filed memo of facts in support of the IAs. In the further examination of PW.2 documents at Ex.P.84 to 90 are exhibited and the cross of PW.2 on the said documents is taken as nil. Therefore, in order to further cross examine PW.2 it is just and necessary to allow the I.A. Hence, prays to allow the I.A.

3. The learned counsel for the plaintiffs has filed objections to I.A. and contended that the applications filed by the defendants are not maintainable in the eyes of law. The plaintiff recalled DW.3 and 4 twice after closing of defendant side evidence. When matter is listed for final arguments the defendants have filed this application after hearing arguments of plaintiffs side. Such applications can be allowed only in rarest of rare cases and that to only by the court for any clarification. These applications are filed only to drag the matter. Hence, prays to dismiss the IAs.

4. Perused the records. Heard arguments.

5. When the matter is posted for further arguments of defendants the defendants have filed these applications and sought to reopen plaintiffs side evidence and recall PW.1. The learned senior counsel for the plaintiff has argued that the witness can be recalled U/ 18 Rule 17 of CPC only by the court for any clarification and in rarest of rare cases only the witness can be recalled. In support of his arguments he has relief on the decision of the Hon'ble Supreme Court in the case of Shubhakaran Singh Vs. Abhayraj Singh & Ors (petition for special

leave to appeal (C) Nos.12012-12013/2025 dated: 05.05.2025) wherein the Hon'ble Supreme Court at para 8 to 10 of its judgment held as under;

*8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that rule therefore, a witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that rule is not intended to serve such purpose, and the purpose for which that rule can be invoked is the one that is indicated above.*

*9. In this connection, we may refer to the following observations in Sultan Saleh Bin Omer v. Vijayachand Sirmal [A.I.R. 1966, A.P. 295.1, which accords with the above view:*

*"A close reading of this rule makes it obvious that the right under that Rule to put question at any stage or a suit or recall any witness for that purpose, is given to the Court. The court can put questions to the witness recalled, and no cross-examination is ordinarily allowed upon the answers to the questions put by the Judge without leave. It cannot therefore be said that an opportunity to a party to recall any witness for the purpose of examining cross-examining or re-examining is governed by O. 18, R. 17 C.P.C.*

*10. We are of the opinion that if circumstances warrant, an opportunity to a party to re-call a witness for examining, cross-examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under Section 151 C.P.C.*

6. With due respect I must agree with the above principle of law laid down by the Hon'ble Supreme Court. In view of the above principle of law it is clear that under the provisions of order 18 rule 17 of CPC the parties cannot recall any witness for the purpose of cross-examination and only court can recall a witness for examination or cross examination. Further, an opportunity to a party to recall a witness can be granted by a court in the exercise of its inherent jurisdiction under Sec.151 of CPC in appropriate cases.

7. In the light of the above principle of law the facts of this case requires to be examined. In this case, order sheet reveals that on 28.06.2024 the learned counsel for the defendants cross examined PW.2 completely and when the matter was listed for arguments on 22.03.2025 the plaintiff has filed IAs U.Sec.151 of Cpc and 18 rule 17 of CPC and sought to recall PW.2 for the purpose of further examination in chief and also filed IA. U/O 7 rule 14 of CPC and produced list with documents and the said IAs were allowed and the PW.2 was further examined on oath and Ex.P.84 to 90 were exhibited. The order sheet and the above IAs show that the plaintiff filed the IAs without serving copies to the counsel for the defendants. Therefore, the said proceedings was not within the knowledge of the defendants and their counsel. Therefore, they could not appear and hence this court on 17.04.2025 passed orders as further cross of PW.2 taken as nil.

8. The above proceedings reveals that in this

case the defendants are not seeking to recall PW.2 for further cross-examination since earlier they failed to cross examine PW.2 completely but they are seeking as PW.2 got reopened his evidence when the matter was listed for arguments and got marked documents as Ex.P.84 to 90 without bringing the same to the knowledge of the counsel for the defendants. Therefore, the defendants now filed these applications seeking to PW.2 for further cross-examination. If PW.2 is not recalled then the defendants will be not able to cross examine PW.2 on the documents exhibited subsequently as Ex.P.84 to 90 and in such case it will prejudice the defendants. Therefore, this court find that this is the appropriate case to recall PW.1 at the instance of defendants by exercising its inherent jurisdiction U/Sec.151 of CPC. Hence, the following;

**ORDER**

The applications filed by the defendants U/s.151 and U/O 18 Rule 17 of CPC I are hereby allowed.

The plaintiffs side evidence is reopened.

PW.2 is recalled.

PW.2 is hereby directed to appear before the court and offer himself for further cross-examination on next hearing date without fail.

The defendants are hereby directed to further cross examine PW.2 on next hearing date without fail.

For further cross of PW.2 finally call on 20.02.2026.

Senior Civil Judge & JMFC, Sedam.