

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
PONNAMPET**

-: PRESENT :-

Sri. Mohanagowda M.E., B.A., LL.B.,
Civil Judge & J.M.F.C.,
Ponnampet.

O.S.No.41/2013

Dated, the 6th day of October 2018.

Plaintiffs:

Machimada M.Bopanna,
S/o: M.M.Madaiah,
Age: 34 years,
R/o: Balliamandur Village & Post,
Srimangala Nad,
Virajpet Taluk,
South Kodagu.

(By **Sri.K.P.Bopanna.**, Advocate)

-Vs-

Defendants:

1. Sanju Kumar V.R.,
S/o: Late V.V.Raju .,
Age: 37 years,
R/o: Government Primary School,
Ponnampet Town and Post,
Virajpet Taluk,
South Kodagu.
2. Ranju Kumar V.R.,
S/o: Late V.V.Raju,
Age: 39 years,
R/o: Opp. Government Primary
School,
Ponnampet Town & Post,
Virajpet Taluk,
South Kodagu.
3. V.S.Ramaiah,

S/o: Late Sannappa,
Age: 70 years,
R/o: Balliamandur Village & Post,
Virajpet Taluk,
South Kodagu.

4. V.R.Mallaiah Gowda @ Manu,
S/o: V.S.Ranaiah,
Age: 35 years,
R/o: Balliamandur Village & Post,
Virajpet Taluk,
South Kodagu.

5. V.R.Ashoka Gowda,
S/o: V.S.Ranaiah,
Age: 33 years,
R/o: Balliamandur Village & Post,
Virajpet Taluk,
South Kodagu.

(By **Sri.N.G.Kamath**, Advocate,

ORDER ON I.A XIV

**Applicant/
Defendant No.1:**

Sri.V.R.Sanjukumar,

**Opponent/
Plaintiff:**

Sri.Machimada Bopanna,

**ORDER ON I.A.No.XIV FILED BY DEFENDANT No.1 UNDER
ORDER 18, RULE 17 OF CPC**

This I.A.No.XIV is filed by the defendant No.1 Under Order 18, Rule 17 of CPC praying to recall PW-1 & PW-2 and allow the petitioner to further cross examine them.

2. It is stated in the affidavit annexed with the application that, the above case is posted for plaintiff's further evidence, however at the time of cross examination of PW-1 & 2 certain vital questions could not be put to them. He also states that the further cross examination of PW-1 & 2 have to be completed and if the same is not completed great injury would be caused to the defendants and they will be put into untold misery and incalculable injury. Hence prays to allow the application.

3. The plaintiff has not filed objection to IA.14 and same is taken as Nil.

4. Heard learned counsels and perused the materials placed before the court.

5. Now, the points that would arise for my consideration are;

1. Whether, the I.A XIV filed by the defendant No.1 deserves to be allowed?

2. What order?

6. My finding on the aforesaid points for consideration is:

Point No. 1 : In the Affirmative.

Point No. 2 : As per final order.

For the following:

REASONS

Point No.1:

7. Heard and perused the materials on record. On basis of the pleadings the court has framed issues, the plaintiff has completed his evidence. On 20.1.2018 PW1 was examined in chief and later on 23.2.2018 PW1 was cross examined and discharged. On 5.4.2018 PW2 was examined in chief and later on 29.6.2018 PW2 was cross examined and discharged. The present IA is filed immediately after PW3 was cross examined. The delay is reasonable. This court being court of first instance has to condone the delay or else it would amount to denial of justice.

8. Hon'ble Apex Court in K.K. Velusamy v. N. Palanisamy (2011) 11 SCC 275 held that the power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power, the power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties.

9. Though it is a belated stage no prejudice will be caused to the other side if the IA is allowed, on the other hand if the I.A is rejected great hardship will be caused to the defendant. Inconvenience caused to the plaintiff can be

compensated in terms of costs. Hence, in view of the above facts I hold the Point No.1 in the Affirmative.

Point No.2: -

10. In view of my findings on point No.1, I proceed to pass the following: -

ORDER

The I.ANo.14 filed by the defendant is hereby allowed subject to payment of cost of Rs.500/- to each witness.

PW.1 and PW2 are recalled for further cross examination.

(Typed by me on my computer, after clerical additions by the stenographer, corrected and pronounced by me in the Open Court on this the 6th October 2018)

-sd-

(Mohanagowda M.E.,)
Civil Judge and J.M.F.C.
Ponnampet.

