

ORDER ON I.A.XXV

The plaintiffs have filed this application under Order XVIII Rule 17 read with Section 151 of CPC for recall of D.W.1 and D.W.2 for the purpose of further cross-examination.

The defendants No.2 to 4 have filed their objections to the application.

I have heard on the application and perused the record.

In the application, the plaintiffs have claimed that when the case was posted for further cross-examination of D.W.1 and cross-examination of D.W.2, their senior counsel could not be present in the court due to ill health as he was suffering left hand shoulder pain and as such, the cross-examination could be done for bonafide reason. However, it is necessary for the plaintiffs to cross examine D.W.1 and D.W.2 in order to prove their case and if they are not permitted they would be put to irreparable loss. On the other hand, the defendants No.2 to 4 have claimed in their objections that sufficient opportunity was given to the plaintiffs to cross-examine to D.W.1 and D.W.2 especially D.W.2 who is an independent witness and it was difficult to procure him but the plaintiff did not cross examined them. The order sheet shows that continuously dates were taken for more than a year for the cross-examination and as such, the plaintiffs cannot be permitted to cross-examine D.W.1 and D.W.2. However, if the court considers to allow the application, D.W.1 will be present and the defendants No.2 to 4 have no objection to cross-examine D.W.1 but it is not possible to keep D.W.2 present on account of his unavailability.

It is true that in this case, the plaintiffs have taken sufficient time to cross-examine D.W.1 and D.W.2 but they cannot be denied opportunity to further cross-examine the said witnesses when the law requires that fair opportunity should be given to them to prove their case. The defendants have not mentioned any special reason as to why it is not possible to keep D.W.2 present and therefore, their claim is not acceptable. As such, I hold that the plaintiffs have made out grounds for allowing the application subject to payment

of costs to the defendants to compensate them for little delaying the proceedings. As such, being satisfied with the application of the plaintiffs, I proceed to pass the following:

ORDER

I.A.No.XXV filed by plaintiffs under Order XVIII Rule 17 read with Section 151 of CPC is hereby allowed on cost of Rs.1,000/-.

The case is reopened, D.W.1 and D.W.2 are recalled and plaintiffs are permitted to further cross-examine D.W.1 and D.W.2.

For cost and further cross of D.W.1 to D.W.3.

Call on 26.02.2026.

I Addl. Senior Civil Judge & JMFC,
KGF