

ORDERS ON IA NO. VI & VII

1. These are the applications filed by the plaintiff/applicant U/sec. 151 of CPC along with IA U/Order XVIII Rule 17 of CPC seeking for reopen the case and recall the PW-1 to PW-3 from the stage of arguments for their cross examination in the interest of justice and equity.

2. In the annexed affidavit to the applications has stated that, this suit has been filed for the relief of Declaration and Permanent injunction and this case is posted for augments. When the lead the chief examination of PW-1 to 3 and case has been posted for their cross examination and then the applicant is suffering from ill health and due to inconvenience he could not met his counsel to give some information to cross examination of witness. And when he was discharged from hospital and met his counsel and then it was comes to his knowledge that his counsel does not cross examine the PW-1 to 3. The cross examination of said witness is very necessary to prove his contention and pray for condone the delay of filing this application and reopen the case from the stage of argument and recall the witnesses for their cross examination. If the applications are not allowing injustice caused to the applicant and if the application will be allowing no harms will be caused to the other side.

3. Interalia the defendants have filed objection to the above said IA's where in they contended that, the application which filed by the applicant are not maintainable under law or on facts. Further contending that, the plaintiff filed his chief

examination affidavit on dated 11.07.2017 and then the defendants did not file any written statement hence the cross examination witness was taken as nil. Thereafter on dated 31.10.2017 the defendant filed written statement but they did not try to file application to pray permission and recall the witnesses for their cross examination. Even the PW-1 to 3 present before this Honorable court the defendants are fail to cross examination of said witnesses. Hence on dated 17.01.2023 this Honorable court taken the cross examination of PW-1 to 3 taken as nil. Thereafter case is posted for defense evidence dated 06.03.2023 but the defendant is fail to adduced any oral or documentary evidence. Therefore the defense evidence taken as nil and posted for arguments, at this stage the applicant intentionally filed above said application only with the intention of drag on the proceedings. Hence he pray for rejection of the same with cost.

4. On the basis of aforesaid the rival contention of the parties and material placed on record the following points would arise for my consideration.

1. Whether the applicant has made out ground for allowing this application?
2. What order?

5. Heard. Perused the material on record.

6. My finding to the above said points are as under:

Point No.1: In the Affirmative

Point No.2: As per the final

order for the following:

REASON

7. Point No.1: The plaintiff has filed is the present suit for the relief of Declaration and injunction. In the above said suit both side evidence has been completed and posted for arguments. At this stage the applicant has filed above said applications to reopen the case and recall the PW-1 to PW-3 for their cross examination. On perusal of the entire record the present suit filed in the year of 2016 and even provide sufficient opportunity to the defendant for cross examination of PW-1 to 3 they did not try to do the same. Thereafter case is posted for defense evidence and then the defendants are fail to adduced their oral and documentary evidence. Then defense evidence also taken as nil and posted for arguments.

8. At this stage the above said applications are filed. In the application submitting that due to ill health and inconvenience of defendant they have been not able to cross examined the witnesses. And the cross examination of PW-1 to 3 is very necessary to prove his contention. The court should give sufficient opportunity to the parties and any of the party did not deprived any right of cross examination. In the consider opinion of this court that the application is deserves to allowing with imposing proper cost with the intention of avoid the multiplication of proceedings, and only with the intention of give one more opportunity to the applicant. And if application is allowed no harm will caused to the other side. **Accordingly answered the point No.1 in the Affirmative.**

9. Point No.2: For the aforesaid reasons and finding on the point No.1, I proceed to pass the following:-

ORDER

IA Nos.VI and VII filed by the applicant U/Order XVIII Rule 17 read with section 151 of CPC and U/sec.151 of CPC are hereby allowed on cost of Rs.500/- each. Cost shall be paid to the witnesses.

The defendant is directed to do cross examination of PW-1 to PW-3 at next date of hearing without fail on their presence.

For appearance and cross examination of PW-1 to PW-3 by:

**Civil Judge & JMFC.,
K.R.Pete.**