

ORDERS ON I.A

1. This IA is filed by the defendant under Order 18 Rule 17 r/w.Sec.151 of CPC, praying to recall PW.2 and 3 for cross-examination in the interest of justice and equity.

2. The IA is supported with the sworn affidavit of the defendant, wherein she has stated that, the plaintiff has filed the present suit against the defendant for the relief of declaration and consequential relief of permanent injunction with respect to suit schedule property. The plaintiff examined himself as PW.1 and other witnesses as PW.2 and 3. When the case was posted for cross-examination, the defendant counsel was suffering from Dengue fever hence her counsel was not able to cross-examine PW.2 and 3. In the mean time this court had taken the cross-examination of PW.2 and 3 as nil and

posted the case for evidence on the side of defendants. Now she has got good case on merits. If the applications are allowed, no harm or injustice will be caused to other side. Hence, it is just and necessary to reopen the case and to recall PW.2 and 3 for cross-examination. Hence, prays to allow the applications.

3. The plaintiff submitted before the Hon'ble court that he had no objection to the said application and no prejudice will be caused if the said I.A. is allowed.

4. Heard and perused the materials on record.

5. The following points arise for my consideration;

1. Whether the defendant has made out grounds to allow said IA at this stage as sought for?

2. What order?

6. My answer to the above points are as under

Point No.1: In the AFFIRMATIVE,
Point No.2:-As per the final order for the following;

REASONS

7. Point No.1: Having heard and on perusal of the record it reveals that, the suit is one for declaration and permanent injunction. When, the matter is stood for defence evidence. Then the present application came to be filed by the defendant.

8. It is to be noted that **Order 18 Rule 17 of the CPC**, enables the court, at any stage of a suit to recall any witness who has been examined and put such questions to him as it thinks fit. 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. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Further Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abused of the process of the Court. It is settled principle of law that as per the provision laid down it is held that, if the sufficient cause is shown and there is due deligence the I.A. should be allowed liberally. Hence an opportunity has to give to the defendant to cross examine the witnesses.

9. More over our Hon'ble Apex court in **AIR 2013 SC 1849: M/s BAGAI CONSTRUCTION** **THR.ITS PROPREITOR LALIT BAGAI V/s M/S**

GUPTA BUILDING MATERIAL STORE,

held that, “In K.K.Velusamy V. N.Palanisamy,(2011)11 SCC 275, even after considering the principles laid down in Vadiraj Naggapp Vernekar(dead) through L.Rs v. Sharadchandra Prabhakar Gogate,(2009) 4 SCC 410 and taking note of Section 151, CPC this court concluded that in the interest of justice and to prevent abuse of process of the court, the trial court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The court should firstly award appropriate costs to the other party to compensate for the delay, Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous or frivolous, or to cover up

negligence or lacunae, it should be rejected with heavy costs.

10. For the reasons stated and by taking into consideration of the facts and circumstances of the case and in order to avoid multiplicity of proceedings, and to adjudicate the dispute in controversy in the present suit only, it is just and necessary to reopen the case of plaintiff. Therefore, in order to avoid another round of litigation and to determine the real dispute between the parties, it is just and necessary to give one more opportunity.

11. In view of my discussions above, I am of the opinion that, the applicant has made out grounds to re-open the case and to recall the PW-2 and 3 for cross examination. If not so, then it will cause much hardship on the defendant. For causing delay in the matter, it is proper to impose suitable cost on the defendant.

With these observations, I **answer the point No.1 in the AFFIRMATIVE.**

12. **Point No.2:** In view of my findings given to the Point No.1 at the aforesaid manner, the applicant is entitled for the relief as prayed for. In the result, I proceed to pass the following:-

: O R D E R :

I.A filed by the defendant under U/O 18 Rule 17 r/w Section 151 of C.P.C are hereby allowed on cost of Rs.500/-.

In the result the defendant is permitted to cross examine PW.2 and 3.

Call on cross examination of PW-2 and 3 by

***(Kavyashree H.S.)
I Addl.Civil Judge and J.M.F.C.
Malavalli, Mandya.***

