



COMMON ORDERS ON IA No.VIII and IX

These IAs filed by the applicant/defendant no.2 U/o 18 Rule 17 of CPC and under section 151 of CPC, praying to recall PW-1 and re-open the case for further cross-examination of PW-1.

2. It is stated in the affidavits that the plaintiff has filed this suit for permanent injunction. Now, the case is set down for arguments. After perusal of documents more particularly the defendant side documents it is necessary to conduct cross-examination of PW-1 for effective adjudication of dispute involved between the parties. Hence, filed these applications, if applications are allowed no kind of hardship will be caused to plaintiff, on the other hand if applications are not allowed it will leads to multiplicity of proceedings. Hence, filed this application.

3. The plaintiff counsel filed objections to the applications and contended that the applicant has not come before the court with clean hands, he has filed these applications only with an intention to drag the case. When PW-1 was already cross-examined by defendants, now once again filed this application to recall PW-1 for further cross-examination only with an intention to fill the lacuna in the evidence. When the case is posted for arguments, at this stage application is not maintainable. hence it is deserves to be dismissed.

4. Heard the arguments.

5. The plaintiff has filed the present suit for the relief of permanent injunction against the defendants. When the case is set down for arguments the defendants filed these applications seeking to recall PW-1 for further cross-examination. In the affidavit filed in support of applications it is stated that after perusal of the suit documents more particularly documents produced by the defendants they are of the opinion that further cross-examination of PW-1 is necessary to substantiate the contentions taken in the written statement. The plaintiff opposed application mainly on the ground of delay and also contended that no party can be permitted to fill the lacuna in the case by conducting further cross-examination. Although, the defendants have not assigned proper reasons for recalling the witness, but considering the facts and circumstances of the case and in view of nature of defence taken by the defendants in their written statement this court is of the opinion that if applications are allowed and PW-1 is recalled for further cross-examination it would be helpful to the court to arrive at a fair conclusion in the case. The delay in availing opportunity is itself is not a ground to deny the relief. For the delay in filing applications the defendants are liable to pay cost. With these observation this court is of the opinion that applications are deserves to be allowed. Accordingly, proceed to pass the following :

ORDER

IA No.VIII and IX filed by the defendant
no.2 U/o.18 Rule 17 of CPC and U/s.151 of

CPC are hereby allowed on cost of Rs.200/- on each application.

Case is re-opened for further cross-examination of PW-1, witness is recalled.

It is further hereby directed that the defendants shall not seek adjournment for cross-examination when witness is present before court on any of the grounds.

For appearance of PW-1 by 03.11.2022.

**Civil Judge and J.M.F.C.
Nagamangala.**

