

ORDERS ON I.A. NO.III AND IV

The applicant/defendant has filed the I.A. No.III U/sec.151 of CPC seeking to set-aside the order of cross-examination of PW.1 as nil dated 29.07.2024.

The applicant/defendant has also filed another application/I.A. No.IV U/o 18 Rule 17 of CPC to recall PW.1 for the purpose of cross-examination.

It is stated in the accompanying affidavit that, on the date fixed for cross examination of PW.1 the counsel for defendant could not able to appear before the Court due to unavoidable circumstances. The cross examination of PW.1 was taken as nil on 29.07.2024. Hence, this application is filed seeking to recall PW.1 for the purpose of cross examination by condoning the delay caused in filing the application. Hence, prays to allow the application.

On the other hand, the counsel for plaintiff absent, hence the objection to IA No.III and IV taken as not filed.

Heard the applicant counsel on IA No.III and IV, and perused the entire records.

The point that arise for my consideration is:

- 1) Whether the applicant/defendant has made out sufficient grounds to allow IA No.III and IV?
- 2) What order?

My findings to the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : As per the order for the following

REASONS

POINT NO.1: The suit is filed by the plaintiff against the defendants seeking for the relief of Permanent injunction.

The matter is of the year 2019. The present application is filed by the applicant/defendant seeking for recall of PW.1 for the purpose of cross-examination.

It is no doubt the suit is filed in the year 2019. When the matter was posted for cross of PW.1, the counsel defendant absent before the Court, hence the cross of PW.1 was taken as Nil, and the matter was posted for defendant evidence. At this juncture the defendant has filed the present application seeking recall of PW.1 for the purpose of cross examination. If the applications are not allowed, the multiplicity of suits and proceedings would have been arise. To avoid the multiplicity proceedings it may not affect any of the party to allow the said applications at this stage. If the applications are not allowed, the sufferer will be one of the party to this suit. Even though the case is posted for defendant evidence, in the interest of justice and equity and for proper adjudication of the suit, the said applications are deserves to be allowed on imposing cost. Accordingly I answer Point No.1 in the **Affirmative**.

POINT NO.2: In view of the above discussion, I proceed to pass the following:

ORDER

I.A. No.III and IV filed by the applicant/defendant U/sec.151 of CPC and U/o 18 Rule 17 of CPC are hereby allowed on cost of Rs.500/-. Out of the said cost, Rs.300/- is payable to TLSA, H.D. Kote, and Rs.200/- is payable to PW.1.

Accordingly, order of this Court is recalled.

Call on for cross of PW.1 on payment of said cost, call on 05.03.2025.

C/c Addl. Civil Judge & JMFC.,
Heggadadevanakote.