

ORDERS ON IA No.XIII and XV

The Counsel for Plaintiff filed IA No.XIII Under Section 151 of CPC for reopen the case, the IA No.XIV Under Order 18 Rule 17 of CPC for recall the PW-1 in order to further examination of PW-1 and IA No.XV under order 7 Rule 14(3) for production of documents with leave of the court.

2. In the accompanying affidavits which enclosed to IA Nos.XIII to XV, the plaintiff has stated that, he filed suit against the defendants for the relief of specific performance of contract to enforce the agreement.

3. Further he has stated that, in order to compliance under Section 16(c) of Specific Relief Act and he has intended to produce the bank statement. The bank statement are reveals that the plaintiff is ready and willing to perform his part of contract. In order to prove the readiness and willingness, he intended to produce the bank balance sheets. Therefore the further examination in chief is very necessary to prove his case. Accordingly, he pray for allow the application.

4. On the other the defendants have filed objection to IA No.XIII and XV, in the objection statement they have contended that, the application filed by the plaintiff is not maintainable and the plaintiff has not assigned any specific reason in the affidavit. Further stated that, the present application filed only after lapse of five years. Therefore, the

application filed by the plaintiff is not maintainable and he filed the same with intention to harass the defendants and also to drag on the court proceedings. Accordingly pray for reject the application.

5. Heard arguments.

6. Perused record, it could be seen that, the plaintiff filed the suit of specific performance of contract to enforce the suit agreement dated 20.04.2019.

7. On the other hand, the defendants contended that, the defendants have not intended to sell the schedule property to the plaintiff whereas, they have availed a loan of Rs.1,50,000/- from the plaintiff. In order to security of the said sum, the defendants have executed loan document.

8. On the basic of rival pleadings of the parties this court framed the issues and posted for trial. Further, the record shows that, the both parties have lead evidence and case posted for arguments on merits at this stage, the present application was filed.

9. The order 18 Rule 17 of CPC., provides that, the court may at any stage suit recall any witnesses who has been examined and may put such questions to him as the court things fit.

10. It is well settled Rule 17 of CPC., enables court to clarify doubts regarding evidence led by the parties. It does not enable filing up off omissions or lacuna in the evidence recorded power conferred.

On the court can be used suo-moto or an application of the parties but, as to be used sparingly in appropriate cases.

11. In the present case on hand, the plaintiff has intended to produce the documents in relating to the bank statement in order to prove the compliance under Section 16(c) of the Specific Relief Act. On the other hand, the defendants taken contention in the written statement that, the plaintiff has not willing to perform his part of contract. Therefore, when the defendants taken such contention, the plaintiff has to be proved that he is always ready and willing to perform his part contract from the date of agreement till filing of the suit. Hence, the reasons assigned by the plaintiff in the application is satisfied and the documents produced by the plaintiff are relevant to the case of the plaintiff.

12. Therefore, if the application is allowed the defendants have got right to cross examine the further examination of PW-1. Moreover, it is not proper to curtail the parties from producing respective evidence on technical grounds. Therefore, this court is of the opinion that it is just and necessary to recall the PW-1 in order to further examination in chief. However, on perusal of order sheet this court it is noticed that, he caused delay by filing this application for that the plaintiff has to compensate by way of cost to the defendants. Hence, keeping in view of the facts and circumstances of the case, the applications filed by the plaintiff are allowed on cost of Rs.1,000/-. Hence, PW-1 is recalled.

OS No.45/2020

For further examination in chief of
PW-1 by: 21.03.2025.

**Sr. Civil Judge and JMFC,
K.R.Nagar.**