

**ORDER ON I.A. NO.4 AND 5 U/O 18 R-17 C.P.C. AND  
SEC.151 OF C.P.C.**

These two applications invoking, contemplating the provision of order 18 Rule 17 and U/s 151 of C.P.C. have been instilled, instituted and submitted before this court by the defendants so as to place their request before this court to recall the PW-1 for the purpose of cross-examination, reopening the matter from the judgment.

**2.** Further the applicant Umashankar has filed his 2 separate different independent affidavits in support and proof of his applications. Where the applicant would assert, state and professed before this court that, the matter has been posted for judgment presently. Further according to him, the counsel representing the applicant could not conduct cross-examination of the PW-1 and also did not lead any evidence on their behalf. Further according to the applicant, due to his illness, health hazards and due to and on account of his non availability, he could not contact his counsel and furnish the

information to conduct cross-examination. Therefore, the cross-examination of the PW-1 and the evidence of the defendant is taken as nil and the matter was set up listed and taken up for the judgment. Further according to the applicant, the said suit is to be reopened so as to permit the applicant to allow him to conduct cross-examination and to lead his evidence. Further as per the statement, recitals, contents and descriptions made therein, it is very necessary, essential, important and requisite to conduct cross-examination of the witness for the purpose of real and true adjudication of the controversies, disputes and to settle all the issues involved in the suit. Therefore, the applicant is avocated, sought and he has requested to consider the application and to allow the same.

**3.** However, retaliating, deviation, antagonizing and contesting the said applications, defiant, disagreeing and declining the statements of affidavits, the objections in the form of defence has been submitted by the plaintiffs. Wherein in response and replying the said applications, the plaintiff would submit before this court that, the present applications have been filed with an intend to procrastinate the proceedings of the suit. The suit which is filed by the plaintiff against the defendants for partition and now the case has been posted for judgment. The plaintiff has used, utilized and he has obtained several occasions, time and opportunities to

conduct cross-examination and to lead evidence. Further fair and sufficient opportunities were issued granted and provided to the defendants. Eventually the cross-examination and evidence of the defendants is taken as nil.

**4.** Further according to the defendants on 22.11.2024, 20.12.2024, 22.01.2025 and 19.02.2025 the this court has given the sufficient opportunity to the defendants, but they have not come forward and to the proceed to lead their evidence. Hence, this court has ordered the defendants evidence as nil and posted for arguments on 05.03.2025, again 05.03.2025 heard plaintiff side arguments and posted for judgment, the same was adjourned on 01.04.2025. At this stage the defendant No.4 had filed an advancement application to recall and reopen application clearly show that, the defendants intentionally filling one or other applications to drag the proceedings till the death of the plaintiff. Therefore, as per the Hon'ble Supreme Court Judgment passed in W.P. No. 32230-32231/2009 (GM-CPC) is clearly shows "once the case has been heard and finally posted for judgment, nothing is required to be done by court except to pronounce the judgment on merit". Hence, prays for dismissal of the applications.

**5.** Heard the rival counsel appearing for the parties regarding the applications and also the objections of the plaintiff.

6. The following points arise for this court's consideration.

**1) Whether applicant has made out sufficient grounds for allowing the present applications?**

**2) What Order?**

7. This court findings on the above points for consideration are as under:

**Point No.1: In the Affirmative**

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

### **REASONS**

8. **POINT NO.1:**

Notably these applications are presented when the case was posted for judgment. Now through these applications the defendants pleading to recall the PW-1 for the purpose of cross-examination. Further, the suit was incept and it was registered for the partition and after expiration and providing numerous umpteen and number of occasions, eventually the matter was taken up for the purpose of argument by considering the cross-examination of the PW-1 as nil. Now the instant 2 applications being brought on record, where according to the applicant, due to her health issues and difficulties, he could not contact his advocate and entrust to cross-examine the PW-1. Therefore, the cross-examination of the PW-1 is taken as nil and the evidence of the defendant side

has also not adduced. Therefore, according to him such cross-examination and leading the evidence is very integral, vital and very necessary so as to prominently put forth, establish and to substantiate the pleadings of the written statement. Further according to the applicant, the cross-examination of the PW-1 plays vital and pivotal role in adjudicating the real conflicts, disputes and controversies between the parties. However, as per the objections, this court has already availed provided and lent many occasions and sufficient time, even after the same, the cross-examination could not be done and the present applications are with ill oriented and motive with an intensity to expel and dragon the proceedings of the suit. Further according to the opponent/plaintiff, once the matter is taken for judgment after the argument, nothing could be done except for pronouncing the judgment. However, the counsel except for referring the judgment of the Hon'ble Supreme Court, he has not provided the copy of the order. Further, when this court gone through the said ratio laid down by the Hon'ble Supreme Court of India, the ratio decidendi and findings, in respect of the facts and circumstances of the present case and the case which was referred by the plaintiff counsel are totally strange, different and hence the said facts cannot suits are applicable to the present case on hand.

**9.** However as stated in the written objections and now the grounds urged in the applications that, the defendant was fell

ill and due to such illness and health hazards, he could not approach and instruct his counsel on the given date, due to which the cross-examination of PW-1 is taken as nil and the matter is posted for evidence of the defendant. Later, the matter is taken up for judgment. No doubt as per the provision contemplated under the code, the court has the power to recall any witness so as to enable them providing fair and proper opportunities to render present and substantiate their pleadings of the plaint and the written statement.

**10.** As such the court may recall the witness either of its own motion or on the application of any party. However the court has to consider the grounds taken and urged by the parties in seeking to recall the particular witness. Here in the instant case on hand, it is the very contention of the applicant/defendants that, the defendant was fell ill and due to such illness and health hazards, he could not approach and instruct his counsel on the given date, due to which the cross-examination of PW-1 is taken as nil and the matter is posted for evidence of the defendant thereafter for judgment.

**11.** Further, the court even after a case is reserved for pronouncement of judgment, the case may be reopened for consideration of an application, but the court has to exercise the said powers sparingly, grim and pedantically and always the applications cannot be considered liberally and leniently. Further, if the applications are brought or filed before this

court with an object and motive to propel and procrastinate the proceedings, such an applications have to be curved, curbed and oppilate.

**12.** However, when the applications are referred with proper affidavits, the court has to ensure that, the opportunities cannot be shorn, slather or taken away. Therefore, if the applications are considered, no prejudice will be caused on the other side i.e., the plaintiff by permitting the defendant/applicant to cross-examine the PW-1. The court may recall any witness so as to enable the court to clarify any doubts at any stage of the proceedings if it is made with bonafide reasons. If the applications are rejected and not permitted the applicant to cross-examine, it will deceive and curtail the right of the defendant/applicant in order to place their valid evidence so as to substantiate their pleadings of the statement.

**13.** Accordingly this court is of the view and opinion that, if the applications are allowed, it will not take away the rights of the plaintiff, so to prove his pleadings stated in the plaint. Further in respect of the delay in filing the applications are concern considering the grievance and contention of the plaintiff that, the applications are instilled only to expel the proceedings of the suit are to be met curved and satisfied imposing suitable conditions and also imposing cost on the applicant. Hence the applications are hereby liable to be allowed by imposing

suitable costs. Hence, this court without further discussion proceeds to answer point No.1 in the **affirmative**.

**14. POINT NO.2:**

In view of the above discussion and reasons mentioned therein this court proceeds to pass the following:

**ORDER**

The I.A.No. 4 and 5 filed by applicant/defendants U/o 18 R-17 of C.P.C and U/s 151 of C.P.C. are hereby allowed on cost of Rs.500/- each.

Accordingly, the applicant is permitted to cross-examine the PW-1.

Call on: 22.07.2025

**(Chandan S)  
Prl. Civil Judge & JMFC.,  
K.R.Nagar.**