

**ORDERS ON I.A.No.III FILED UNDER ORDER 9 RULE
7 R/W SECTION 151 OF C.P.C AND I.A.No.IV FILED
UNDER SECTION 151 OF C.P.C.**

At the stage of Judgment these I.A.No.III & IV filed by the applicant/defendant No.1 under Order 9, Rule 7 of C.P.C and under Section 151 of C.P.C., seeking to setting aside the exparte order against defendants and to defer the Judgment and permit the defendants to file written statement in the above case.

2. In I.A.No.III & IV it is stated that, for the reasons mentioned in the accompanying affidavit that, due to his personal inconvenience he could not appeared before this court on the dates of hearing. Hence, this court passed exparte order against defendant. Now the case is posted for Judgment. The delay in appearing in this case is not intentional. He has also stated that, it is necessary to allow the I.A. If the application is not allowed great hardship will be caused to them. Accordingly, he has prayed to allow the above I.A.No.III & IV.

3. On the other hand, the learned counsel for the plaintiff has submitted that, I.A.No.III & IV may be allowed on heavy costs.

4. Heard both the sides and perused the materials available on record.

5. Now the only point that arise for my consideration are:-

1. Whether the applicant/defendant No.1 has made out a sufficient grounds to allow the I.A.No.III & IV?

2. What Order?

6. My answers to the above points are :-

Point No.1 : In the **Affirmative**.
Point No.2 : As per final order
for the following:

:: R E A S O N S ::

7. **Point No.1**. The plaintiff has filed this suit against the defendants for the relief of permanent injunction. The defendants did not appear before the Court and placed exparte. In this case, already the evidence of the plaintiff's side and defendant's side have been completed and learned advocate for plaintiff has canvassed the arguments. When the case has been posted for the judgment, the applicant/defendant No.1 has come up with this I.A.No.IV with a prayer to defer the judgment for the purpose of file written statement and

objected statement in the above case to disprove the case of the plaintiffs.

8. The learned counsel for the defendants has argued that, due to his personal inconvenience he could not appeared before this court. The burden is on defendants to disprove the case of the plaintiffs. Hence, they have prayed to allow the above application in the interest of justice and equity. On the other hand, the plaintiffs have not objected the above said applications.

9. On the other hand, the learned counsel for the plaintiffs has argued that, the case is already posted for judgment. The defendants have already taken sufficient opportunity. Hence, I.As may be allowed on heavy costs.

10. After careful perusal of the entire case file and also after hearing the both sides on these I.A., I have also perused the specific provision of Rule 17 of Order XVIII of C.P.C. which states that, *“the Court may at any stage of the suit recall any witness who has been examined”*. As per the above provision, the Court may permit the party to re-call his witness for further examination at any stage of the suit that includes even at the stage of argument. However, it is the discretionary power of the Court.

In this regard the Hon'ble Supreme Court of India in the case of **K.K.Veluswamy -V/s.- N.Palaniswamy reported in 2011(11) SCC 275**, wherein the Hon'ble Supreme Court of India is held that, "in appropriate cases the Court can exercise its discretion to permit to reopening the evidence and or recalling the witnesses for further examination/cross-examination after the evidence led by parties is concluded and arguments have commenced or even when arguments have concluded and case has been reserved for judgment to meet the ends of justice and prevent abuse of process of Court".

11. The above ratio aptly applicable to this case. Therefore, I am of the opinion that, the burden is on the defendants to disprove this case as this is the suit filed by the plaintiffs for the relief of permanent injunction. Under Order 9, Rule 7 of C.P.C., i.e., the order of exparte can be set aside if the defendant appears and assigns good cause for his previous non-appearance. The defendant No.1 has stated the cause for the non-appearance of the defendants. The reasons are satisfactory. If the order of exparte is set aside and permit them to put their appearance, the proper adjudication of the case will be possible. The defendant No.1 has filed this application after the lapse of 02 years, it would be allowed on heavy cost it will not put to any hardship and loss to the plaintiffs. Further the

defendants have already taken sufficient opportunity in the earlier stage. Moreover in the interest of justice and equity and also in order to avoid the multiplicity of proceedings the sufficient opportunities are to be given to the defendants in this case. It is the contention of the defendants that, the applicant has filed the application in the belated stage. But the said sole reason is not the ground to reject the application. Thus, in the ends of justice and equity and also for the proper adjudication of the case and also in order to avoid the multiplicity of proceedings, if this I.A. is allowed on heavy cost, no hardship will be caused to the opponents/plaintiffs. Therefore, I am of the opinion that the applicant has made out sufficient grounds to allow I.A.No.III & IV. Hence, Point No.1 is answered in the **Affirmative**.

O R D E R

I.A.No.III & IV filed under Order 9, Rule 7 R/w Section 151 of C.P.C and under Section 151 of C.P.C by the learned counsel for the applicant/defendant No.1 is hereby **allowed on cost of Rs.2,000/-**.

The order of exparte passed against the defendants is hereby set aside.

The judgment is hereby deferred.

The defendants are permitted to put their appearance and file their written statement.

Call on:16.12.2024.

**Addl. Civil Judge & J.M.F.C.,
T.Narasipura.****