

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,
Senior Civil Judge & JMFC, Devadurga.

O.S.No.14/2021

DATED : THIS THE 25th DAY OF JANUARY 2024

Plaintiffs: ReNew Wind Energy (MP3) Private Ltd.,.
(By Sri.S.G.K., Advocate)

--V/s--

Defendants: Smt.Rathnamma W/o. Umesh Motagi
and others.

(D.1 &2 by Sri.A.M.P. adv)
(D.3 by Sri.C.S.V. Advocate)

Provision under which the application is filed	U/o.XVIII rule 17 R/w.Sec.151 of C.P.C.
Relief sought for	Re-call the PW.1 to tendering cross- examination .
The date on which the application is filed	28.11.2023.
Number of the application	IA.No.VII
The date on which the objections are filed by different opponent	19.12.2023.

The date on which the orders were passed on the said application	25.01.2024
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**Senior Civil Judge & JMFC.,
Devadurga.**

ORDER ON IA NO.VII

The present suit is for specific performance of contract. In the alternative the plaintiffs sought for return of earnest money.

2. The present application has been filed by the plaintiff seeking permission to recall PW1 to face cross examination. The plaintiff submits that PW.1 was threatened by defendant no.3. Therefore, PW.1 could not appear to face cross-examination. The non appearance of PW.1 is because of bonafide reasons. In this regard, plaintiff prays as above.

3. The defendant no.3 in objections denied the application averments and submits that the plaintiff created a false story. In this regard, defendant no.3 prays to reject the application.

4. Heard arguments of counsel.

5. Considering the contention of both the parties following points arise for my consideration.

1. Whether plaintiff has made out a case to recall PW.1 to face cross-examination ?
2. What order?

6. My finding for the above points are as follows

Point No.1 : In the affirmative
Point No.2 : As per final order
for the following ;

REASONS

7. **Point No.1:** - It is the case of plaintiff that PW.1 was threatened by defendant no.3. Therefore, PW.1 could not appear to face cross-examination. The non appearance of PW.1 is because of bonafide reasons.

8. In the case at hand, the plaintiff intends to tender PW.1 to face cross-examination. Be it noted, the cross-examination of PW.1 is necessary to ascertain the truth. Further, the cross-examination of PW.1 is helpful for the plaintiff to put-forth their grievance against the defendants. It is necessary to note that right of plaintiff to put forth their case cannot be curtailed as the same amounts to curtailing the rights of plaintiff to put-forth their stand. Considering the application and the objections, I am satisfied with the reasons made out by plaintiff for not tendering PW.1 to face cross-examination. So also, if PW.1 is permitted to face cross-examination no harm will be caused to the defendants.

9. It is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

In view of the law on hand and considering the circumstance of the present case I am of the view that there is no impediment to allow the application.

10. It is to be considered that if the present application is not allowed plaintiff cannot put-forth their case and hence the inconvenience which may be caused to them is more than the inconvenience which may be caused to the defendants if the application is allowed. Further, if the application is not allowed the injury which may be caused to plaintiff cannot be compensated at any cost, on the other hand the defendants will have the opportunity to contest the matter and get the same decided on merits. Considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no. 1 in the affirmative.

11. **Point no.3:** - In view of reasons on point No.1, I proceed to pass the following,

O R D E R

IA no.X filed by the plaintiff is hereby

allowed on cost of Rs.100/- .

PW1 is permitted to face cross-examination.

(Dictated to the stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the 25th day of January 2024.)

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.