

ORDER ON I.A.No.7 under Sec.151 of CPC

The counsel for the Plaintiff has filed this application seeking permission to discard the evidence of the Plaintiff that was recorded on 10-07-2018 and to permit her to lead fresh evidence.

2. In the affidavit sworn in support of the present applications, it is sworn by the Plaintiff that, she has already filed her affidavit and since 2021, she is not able to move about since she is suffering from slip disc and is under medical treatment and her doctor has advised her not to travel outside. Hence, she has already given SPA to her husband to prosecute this case on her behalf. Hence. She has prayed to allow the application.

3. Per contra, the counsel for the Defendant has filed objections to the present application by opposing to allow the same on the ground that the same is not maintainable either in law or on facts and that the Plaintiff is now trying to improve her and that the deposition already on record, cannot be

discarded. That the SPA is not yet allowed. Hence, the SPA Holder of the Plaintiff cannot be permitted to adduce evidence. Hence, on these among the other grounds, it is prayed to dismiss the applications with costs.

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

5. The following points would arise for my consideration:-

- i) Whether the I.A.No.7 filed by the Plaintiff deserves to be allowed?
- ii) If so, what order?

6. My answers to the above points are as under:-

Point No.1 : In the Affirmative;

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

REASONS

7. POINT No.1:- Admittedly the Plaintiff has filed this suit against the Defendant for Specific Performance of the Agreement of sale dated 05-02-2013.

8. The order sheet reveals that already the Plaintiff is examined as P.W.1 and she has filed her affidavit in lieu of her chief examination. Thereafter when the case is posted for the further chief examination of P.W.1, the Plaintiff has come up with the present application. No doubt, there is no provision in law to discard the evidence of the party or the witness to the suit and it remains on record. However the reason assigned by the Plaintiff for her non-appearance before the court is because of her health condition.

9. It is seen that, along with the present application, the Plaintiff has produced the Medical Certificate issued by her Doctor, as per which, it is stated that, she is advised to be on bed rest for the reasons stated therein. Though the Defendant has opposed the application, the medical certificate is not disputed by the Defendant. Moreover the reason assigned by the Plaintiff is not disputed by the Defendant. Even otherwise, the Plaintiff is seeking permission to be represented by her husband. No doubt as of now, the Plaintiff has not yet filed any I.A seeking permission to lead evidence through her SPA Holder. However considering the contents of the affidavit

sworn by the Plaintiff and the medical certificate produced by her in this case, it is just and proper to allow the I.A. By doing so, no prejudice is going to be caused to the otherside. Therefore, at this stage, it is considered just and proper to allow the said application. Accordingly, the following:-

ORDER

I.A No.7 under Sec. 151 of CPC filed by the Plaintiff is hereby allowed.

The evidence of P.W.1 is discarded.

31-10-2022.

Prl. Senior Civil Judge & CJM.,
Ramanagara.