

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE,
RAMANAGARA

:PRESENT:

Smt. K.Srividya, B.A.L., LL.M.,
Addl. Senior Civil Judge,
Ramanagara.

O.S. No.434/2011

DATED : THIS THE 14th DAY OF NOVEMBER 2017

Plaintiff : Syed Imran.

- V/s -

Defendant : Md. Samiulla.

* * * *

I.A. dated 12.10.2017

Applicant : Md. Samiulla. (defendant)

-V/s-

Opponent : Syed Imran. (Plaintiff)

* * * * *

Orders on I.A. dated 12.10.2017

I.A. dated 12.10.2017 is filed by the defendant under Order 18 Rule 17 r/w Sec.151 of CPC to recall PW3 & OW4 for further cross-examination on behalf of the defendant. It is accompanied by affidavit. Objection is filed to the said application.

2. In the affidavit accompanying the application, the defendant state that, similar application was allowed by this Court on 13.04.2017. however, on the date of further cross-examination of PW3 & PW4 his counsel was suffering from ill-health and the further cross-examination of PW3 & PW4 was taken as nil. Further state, earlier counsel has omitted to cross-examine PW3 & PW4 on vital informations. Hence, prays for recalling the witnesses to be cross-examined on vital informations.

3. In the objection, apart from usual denial of the averments mentioned in the affidavit accompanying the application, the plaintiff states that, more than 4 similar applications were filed recalling the witnesses for further cross-examination. It is the 5th application filed by the defendant. Further state, the attitude and conduct of the defendant shows that, his intention is to drag on the suit and cause hardship to the plaintiff. Further state, to reject the application on exemplary cost of Rs.10,000/- for each of the witness.

4. The following points arise for my determination.

(1) Whether PW3 & PW4 have to be recalled for further cross-examination by defendant ?

(2) What order ?

5. Heard the Counsels.

6. My findings on the above points are as follows.

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

REASONS

7. POINT No.1 : Heard the counsel and perused the records. The suit is filed by the plaintiff for Specific Performance relief. Under the present application, the defendant intend to recall PW3 & PW4 for further cross-examination.

8. The record reveals, PW3 & PW4 were chief examined on 21.03.2013 and subsequently, on 28.09.2013 when PW3 & PW4 were present, the defendant was absent and cross-examination of PW3 & PW4 was taken as Nil. Subsequently, on 16.01.2014 PW3 & PW4 were recalled for cross-examination by imposing cost on defendant.

9. On 13.02.2014, PW1, PW3 & PW4 were present. On said date defendant partly cross-examined PW1 and sought time to cross of PW3 & PW4.

10. On 15.03.2014, PW1, PW3 & PW4 were present. Adjournment application was filed by defendant stating senior counsel not well. The further cross-examination of PW1 and cross-examination of PW3 & PW4 were adjourned to 05.04.2014 on cost.

11. On 05.04.2014, PW3 was absent. Defendant counsel submitted cannot cross-examine PW4 as they intend to cross PW3 & PW4 on same date and case adjourned to 19.04.2014.

12. On 19.04.2014, PW1, PW3 & PW4 present. Defendant counsel sought time on ground senior counsel is in Mangalore. Plaintiff counsel seriously objected to further adjournment. However, the case was again adjourned for cross-examination of PW1, PW3 & PW4 on cost.

13. On 26.04.2014, PW1 & PW3 cross-examined in full and PW4 partly cross-examined and was adjourned to 3.00

p.m. When the case was called at 3.00 p.m., the defendant sought time for further cross-examination of PW3 on the ground that, the counsel has gone to Bangalore as he received information somebody is dead. The case was adjourned for further cross-examination of PW4 for 07.06.2014.

14. On 07.06.2014, PW4 was present. Adjournment application was filed and objection was filed. However, the adjournment application was rejected.

15. On 05.07.2014 recall application was filed by defendant which was allowed and PW4 was cross-examined on same date by imposing cost on defendant from 04.08.2014 to 21.07.2016 defendant took time to adduce his evidence.

16. On 11.08.2016 similar application filed to recall plaintiff PW1 witness for cross-examination after defendant

counsel was changed and it was allowed on cost. On 19.11.2016 similar application filed to recall PW3 & PW4 for further cross. As per order dated 13.04.2017 the I.A. allowed and PW3 & PW4 recalled for further cross-examination by imposing cost on defendant.

17. On 17.08.2017, 07.09.2017, 14.09.2017, PW3 & PW4 were present. Another counsel filed joint vakalath for defendant counsel and sought time to cross-examination on ground senior relation not well. However, on 14.09.2017, further cross-examination of PW3 & PW4 was taken as nil as sufficient time granted.

18. On 12.10.2017 the present application came to be filed by defendant. This Court views that, on every occasion when the case is called for cross-examining plaintiff witness, either senior not well or senior relation

not well or any other reason given without supportive documents.

19. The case record reveals it is a clear case where the defendant just wants to drag on the proceeding and misusing the opportunities given by this Court for cross-examining the plaintiff witness. This Court views that, sufficient opportunity is given to defendant to cross-examine plaintiff witness. PW3 & PW4 already cross-examined at length. If the defendant intended to cross further PW3 & PW4, they should have cross-examined earlier when opportunity was given. However, inspite of recalling PW3 & PW4 for further cross-examination, they failed to cross-examine them. Hence, no grounds made out to recall PW3 & PW4 for further cross-examination. With this observation, **Point No.1 is answered in the Negative.**

20. Point No.2 : Based on findings in Point No.1, proceed to pass the following :

ORDER

I.A. dated 12.10.2017 filed by the defendant under Order 18 Rule 17 r/w Sec.151 of CPC to recall PW3 & PW4 for further cross-examination is hereby rejected on cost of Rs.2,000/- to each of the witness.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on this the 14th day of November 2017).

(K. SRIVIDYA)
Addl. Senior Civil Judge,
Ramanagara.

Order Pronounced in the open Court vide separate order:

ORDER

I.A. dated 12.10.2017 filed by the defendant under Order 18 Rule 17 r/w Sec.151 of CPC to recall PW3 & PW4 for further cross-examination is hereby rejected on cost of Rs.2,000/- to each of the witness.

Defendant evidence taken as closed.

For argument.

Addl. Senior Civil Judge,

Ramanagara.