

Date: 16-01-2014

**ORDERS ON I.A. FILED BY THE DEFENANT UNDER ORDER
XVIII RULE 17 READ WITH SECTION 151 CPC**

This application is filed by the defendants with a prayer to recall PW1 to 4 for the purpose of cross examination for the reasons stated in the affidavit.

2. In the annexed affidavit, the defendant contends this suit is filed by the plaintiff for the relief of specific performance of contract. When the matter was set down for cross examination of PW1 to 4 the counsel for the defendant was not present due to personal inconvenience and hence it was taken as cross examination nil of PW1 to 4. It is necessary for the defendant to cross examine PW1 to 4 to prove his defence and if the application is not allowed greater loss and injustice would be caused to the defendant. Therefore, it is prayed to allow the application.

3. The plaintiff filed objections contending that the application is not maintainable as it is filed with flimsy grounds. The plaintiff had kept all the witnesses present for the cross examination but the defendant wanted to cross examine all the witnesses on the same day and hence the plaintiff had kept them present accordingly. However, the counsel for the

defendant has failed to cross examine witnesses knowing fully well that it cause inconvenience to the witnesses. Therefore, the application is liable to be dismissed and if allowed greater injustice would be caused to the plaintiff. Hence, it is prayed to dismiss the application.

4. Heard the arguments.

5. I have perused the case papers and it goes to show that as per order sheet dated 07-09-2013 the counsel for the defendant prayed time for cross examination of PW1 on the ground that he would cross examine all the witnesses together and on the same day. Accordingly, his submission was noted down in the order sheet. On 28-09-2013, PW1, 3 and 4 were present for cross examination. But, the counsel for the defendant remained absent though, the case has been called twice. As PW2 was absent, the counsel for the plaintiff has sought for discarding the evidence of PW2 and an order has been passed to that effect. But because the counsel for the defendant did not appear when PW1, 3 and 4 were present, this court has proceed to record that there is no cross examination of PW1, 3 and 4 and it is taken as nil. At that stage, the advocate for the defendant has filed this application to recall the witnesses for cross examination. In my opinion, no doubt, there was sufficient time granted for the defendant to cross examine PW1, 3 and 4 but that opportunity was not made use of by the defendant. However, to meet the ends of justice and also

because an opportunity should be granted to the other side to cross examine the plaintiff and his witnesses, by imposing cost of Rs.200/- each witnesses, the application can be allowed. As the evidence of PW2 is discarded on the prayer of the counsel for the plaintiff, I direct that PW1, 3 and 4 are recalled for the purpose of cross examination and the counsel for the defendant shall cross examine on the next date of hearing by paying total cost of Rs.600/-. With this observation the application filed by the defendant is allowed. Hence, I pass the following

ORDER

The application filed by the defendant under Order XVIII Rule 17 read with Section 151 CPC is allowed on cost of Rs.600/-.

PW1, 3 and 4 are recalled for cross examination and defendant shall cross examine them on the next date of hearing without fail.

Call on 13-02-2014.

**ADDL. SENIOR CIVIL JUDGE,
RAMANAGARA.**