ORDERS ON I.A No.16 AND 17 FILED BY THE APPLICANT/DEFENDANT UNDER ORDER 18 RULE 17 R/W SEC.151 OF C.P.C. ALONG WITH INTERLOCUTORY APPLICATION UNDER SECTION 151 OF C.P.C.

The learned counsel for defendant has filed the application No.16 and 17 seeking this court to recall and reopen the stage from arguments to lead further cross examination of PW.1 in the interest of justice and equity.

2. On perusal of the said application No.16 and 17 which is annexed with affidavit and the contents therein are one and the same. Wherein, it is submitted that, the suit of the plaintiffs is one for the relief of declaration and injunction against the defendants and the stage has been set down for arguments by defendants. However, the defendant need to further cross-examine the PW.1 who is the plaintiff No.2 to elicit evidence much required over some of the documents which was left out at the time of cross-examination of the PW.1 and also the defendant need to produce those documents relying upon his evidence. Hence, it is just and necessary to reopen and recall the stage for further cross-examination of PW.1.

3. The learned counsel for plaintiff has filed objections in common by submitting that the present applications are not maintainable and has denied the averments raised in the affidavit. It is further submitted that, the plaintiff No.3 after completion of his chief-examination has got marked Ex.p.1 to Ex.p.29 as documents on his behalf and on 08.11.2023 itself the learned counsel for defendant has cross-examined the PW.1 in full and later even the defendant has completed his side of evidence and has been cross-examined in full and further the plaintiffs have submitted their side of arguments also and matter was kept for arguments by defendants and three adjournments have been taken by the defendant as on 06.04.2026, 08.04.2026 and 10.04.2026 and specifically on 08.04.2026 the counsel had sought time due to his illness and time was granted accordingly but on the next date of hearing the present application are filed only to drag on the proceedings.

4. Heard both the sides.

5. Matter is of the year 2017 and the suit is one for declaration and injunction. Admittedly, the stage is set down for arguments by defendant with final chance. On perusal of the order sheet, it reflects that, after taking sufficient time the learned counsel for defendant has cross-examined the PW.1 in full as on 10.06.2025 and later the plaintiff has got examined witnesses on their behalf as PW.2 to 5 on oath, wherein, PW.2 and 4 was cross-examined by learned counsel for defendant after taking time for the same. PW.3 and 5 did not turn up for cross-examination. Hence, the same was taken as Nil. Further the defendant concluded his side of evidence by tendering for cross-examination as on 16.12.2025 and also got adduced the evidence on his behalf as DW.2 and he was also fully cross-examined on 22.01.2026 and later the plaintiff concluded their side of arguments by taking sufficient time and opportunity and when the matter was posted for arguments by defendants and sufficient time was given the present applications are filed.

6. On perusal of the entire materials on record, the said defendant has cross-examined the said PW.1 at complete stretch and have concluded the same after taking sufficient time and opportunity from the court. At this outset, when the defendant was suppose to submit the arguments the present applications is filed. At this stage it is to be noted that, order 18 rule 17 of CPC is very much clear that, the said provision is made available to court to recall any witness at any stage solely for the purpose of seeking clarification however, it does not grant any right to the parties to recall witnesses for further examination or cross examination in order to fill up any lacuna or cover any evidence and it is well established law that the discretionary power of the court while exercising its discretion U/o 18 Rule 17 of CPC and Sec.151 of CPC the same must be with judicious mind and in accordance with the

required procedure under law. In the present matter, the applications filed before the court does not reveal as to why it is necessary to recall the said witnesses before the court even after completion of their deposition in the matter and there is no proper substantiation made before the court in this regard and that apart at this stage this court has reflected no clarification required for the said witness to be called. However, keeping that aside the very application does not carry any explanation as to why this court has to exercise the discretionary power and call the PW.1 for further cross-examination and the reasons assigned shows the defendant is trying to cover up the lacuna as because the evidence of PW.1 is completed way back in the last year and later on the defendant has also concluded his evidence and hence he had complete knowledge as to the updates regarding the case. Hence, when there is no substantiation made to the said effect, the applications at I.A No.16 and 17 filed by him cannot be meagerly be considered by this court. Hence, with the said observation it could be said that, the I.A No.16 and 17 does not deserves to be allowed. Accordingly this court proceed to pass the following:-

ORDER

The Interlocutory Application No.16 and 17 filed by defendant stands rejected with costs of Rs.200/-.

For arguments by defendant finally with no adjournments by 23.04.2026.

Sd/-
I Addl., Civil Judge & JMFC,
Kanakapura.