

**ORDER ON I.A No.11 and 12**

The defendant filed I.A No.11 U/o 151 of CPC to re-open the stage and I.A No.12 U/o 18 Rule 17 of CPC for recall of PW.1 for cross-examination.

2. In the affidavit contended that, when the case is posted for cross of PW.1 on 17.04.2021 and noting the absence of the defendant and his counsel closed the evidence of cross of PW.1 and taken as nil and case is posted for arguments. As the mother of the defendant is not feeling well and she is aged lady and the defendant could not meet his advocate in time and not instructed to lead his evidence and also the defendant has no knowledge about the court proceedings. If the application is not allowed, he will be put to great hardship. Hence, prays to allow the application.

3. On the other hand, the advocate for the plaintiff filed objection and denied the contents of the affidavit and also specifically contended that, this court has several times opportunities were given even then twice the PW.1 was recalled and even then the defendant did not cross-examined the PW.1 sufficient opportunities were given and also only to drag on the proceedings filed the I.A No.9 and 10 and again not pressed the I.A No.9 and 10 and also filed the present applications. This itself clearly shows that only to drag on the case filed the applications. Hence, prays to reject the applications.

4. Heard both the sides.

5. After going through the material available on records, the plaintiff filed this suit for Specific performance of contract. As per the records, the plaintiff was examined and case was posted for cross-examination of PW.1, on 11.11.2019 on the same day due to absence of defendant and his counsel the cross of PW.1 taken as

Nil and subsequently case was proceeded and PW.2 was also examined and again the application was filed for recall of PW.1 and said application was allowed on cost of Rs.200/-. But even then the defendant did not cross-examined the PW.1. Hence, on 17.04.2021 cross of PW.1 taken as Nil and again case was proceeded and PW.3 was also examined and did not cross examined the PW.3 also. Again case was proceeded and applications were filed and also the PW.2 was not cross-examined by the defendant and also after closing the evidence of plaintiffs side. The case is posted for evidence of defendants side. Even after giving sufficient opportunities, the defendants did not adduce the evidence. Hence, defendant evidence taken as nil. Mean time the defendant filed applications for recall of PW-1 and subsequently not pressed the same and filed the present applications for recall of PW-1. On 20.09.2023 the defendant filed these applications to recall the PW.1. In the affidavit stated that, his mother was not feeling well and due to her ill health he could not

contact the counsel and also moreover in the affidavit contended that, noting the absence on 17.04.2021 and their counsel closed the cross of PW.1 and taken as Nil and case is posted for arguments. In the affidavit not properly pleaded about the stages of the case. Moreover, as per the records, sufficient opportunities were given to the defendants to cross-examine the PW.1. When the case is posted for arguments filed these applications. After going through the entire order sheet, it clearly shows that, the defendant is dragging the case. Hence, under such circumstances, this court is of the opinion that, the defendants have not made out grounds to allow the applications. this court proceed to pass the following;

**ORDER**

I.A.No.11 and 12 filed by the defendant U/s 151 of CPC and U/o 18 Rule 17 of CPC respectively is hereby rejected on cost of Rs.500/- and the said cost is paid to the TLSA, Kanakapura.

O.S.No.407/2016

Call on for arguments finally

07.12.2023

**(SURESH ANNAPPA SAVADI)**

Prl. Civil Judge & JMFC.,  
Kanakapura.