

KAUP010013092024



**IN THE COURT OF THE II ADDITIONAL
DISTRICT/COMMERCIAL COURT JUDGE AT UDUPI**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

**II Addl. District & Sessions Judge,
Udupi.**

Dated: 27th Day of February 2026

O.S.No.69 of 2024

*** * ***

PLAINTIFF:

Sri.Ganesh Hegde

(By Sri.APH)

Versus

DEFENDANT:

Sri.Ananda Kulal

(By Sri.UPK)

IA.No.III

Applicant/Defendant;

Sri.Ananda Kulal

Versus

Opponent/Plaintiff;

Sri.Ganesh Hegde.



Provision under which IA is filed	Under Section 151 of CPC
Relief sought for	To recall Pw1 for cross-examination
Date of filing of application	05.11.2025
Application No.	III
Date of filing objection	20.11.2025
Date of order	27.02.2026

Defendant moved this application under Section 151 CPC, to recall Pw1 for cross-examination.

2. Plaintiff resisted the application by filing statement of objections.

3. Heard arguments; perused records.

4. Following point arises for consideration;

Whether defendant made out a case to allow the application as prayed?

5. Answer to the above point is in the ***affirmative*** for the following;



R E A S O N S

6. At the outset; suit is filed for recovery of ₹13,85,033 from the defendant. Defendant resisted the suit by filing written statement. After completion of pleadings and settlement of issues; trial was commenced.

7. The plaintiff examined himself as Pw1 and matter was set for cross-examination. Since, plaintiff failed to cross-examine the Pw1, the cross-examination of Pw1 was taken as nil. In this background present application is filed by asserting that the defendant was trying for settlement but settlement was not arrived. The suit agreement is insufficiently stamped and if he is not permitted to cross-examine the Pw1, he will be subjected to hardship.



8. Plaintiff objected the application by contending that in spite of sufficient opportunity the defendant failed to cross-examine the Pw1 and instead of cross-examination he filed IA-II seeking amendment of written statement. In application two prayers are sought, as such it is not maintainable. If application is allowed plaintiff will be subjected to hardship. Hence, prayed to reject the application.

9. Notably, the present stage of suit is further evidence on the side of plaintiff. Since, the case is set for plaintiff's further evidence, the application seeking recall of Pw1 for cross-examination is proper and seeking to reopen the case does not arise.



10. Having regard to the facts asserted and facts denied by the parties to lis, and the core dispute about the suit agreement, which the plaintiff claims to be executed by the defendant, whereas the defendant claims it was fraudulently obtained, this Court is of the opinion that the application at hand deserves to be considered. Under these circumstances the cross-examination of Pw1 is very much necessary to resolve the real dispute between the parties. In this backdrop if one more opportunity is not provided to the defendant, he will be subjected to hardship and it amounts to denial of an opportunity to defend his case and in that event it violates the principles of natural justice. Hence, above point is answered in the affirmative and proceeds to pass the following;



ORDER

IA-III; under Section 151 of CPC
filed by the defendant is allowed.

Pw1 is recalled for cross-examination.

No order as to costs.

(Dictated to the stenographer, transcribed by her,
corrected and signed by me and then pronounced in open
court on this the **27th day of February, 2026.**)

(A.Samiulla)

II Addl. District Judge/PO,
Commercial Court, Udupi.