

### **ORDER ON IA 16 & 17**

Since both these interim applications are arising out of the same facts, therefore taken together for disposal to avoid repetition of appreciation of facts.

IA 16 is filed by the plaintiff /applicant under Sec.151 of CPC and sought to reopen the case for further evidence of the plaintiff .

IA17 is filed by the applicant/plaintiff under Order XVI Rule 1 & 2 and Sec.151 of CPC and sought to issue witness summons to one Nikita G. Kotian defendant No.1(c) to give evidence.

2. Both the interim applications are supported by affidavit of the plaintiff wherein it is contended that the proposed witness and her deceased mother original defendant had lodged complaint before Dadar Police Station, Mumbai, against the plaintiff. The Dadar Police had called the plaintiff for enquiry. During the course of enquiry, the proposed witness had given statement before the police about the execution of Ex.P1 agreement of sale. The said witness had admitted the contents of

Ex.P1. Therefore her evidence is material. Hence sought to allow the applications.

3. The opponent Lrs of the defendant have filed objections wherein it is contended that plaintiff has to prove his case independently and cannot summon his adversary/opponent as his witness and prove his case. Hence the applications may be rejected with costs.

4. Heard the arguments.

5. The points that would arise for my determination are:

1. Whether the applicant/plaintiff has made out a case to summon the proposed defendant No.1(c) as prayed for?

2. What order?

6. The above point No.1 is answered in the negative and point No.2 for the following:

### **REASONS**

7. **Point No.1:** This suit is filed by the plaintiff for the Specific Performance of Contract. The plaintiff has concluded his evidence. The learned counsel for defendant has submitted that he has no evidence of the defendants. When the case is posted for arguments the present application is filed.

8. On perusal of the affidavit filed in support of IA No.16 and 17, the plaintiff wanted to examine the proposed witness on the ground that she along with her deceased mother Shantha has admitted contents of Ex.P1 before the police and gave statement. Therefore she may be summoned as a witness. It is to be seen that the statement alleged to have been given by proposed witness before the police, even assuming that the said statement is given before the police, even then plaintiff cannot compel his adversary/opponent to give evidence against her case. The plaintiff cannot compel the proposed witness who is party to the proceedings to give evidence against her interest. No doubt it is true that the defendants have not been examined but it is their option. Apart from that the agreement of sale alleged to have been executed in favour of plaintiff is admitted, but the core issue with regard to the defendants to prove that the plaintiff had materially altered the figures “12” and “16”. Under such circumstances no grounds made out to allow the applications. **Hence I answer point No.1 in the negative and proceed to pass the following:**

**ORDER**

IA 16 filed by the applicant/plaintiff  
under Sec. 151 of CPC and 17 filed by the

applicant/plaintiff under Order XVI Rule 1 & 2  
and Sec.151 of CPC are hereby rejected.

No order as to costs.

Call for arguments : 25.10.2019

**(Vivekananda S. Pandit)**  
Prl. Senior Civil Judge & CJM,  
Udupi