

1/1/23

-113-

OS 67/17

30-9-2024

P - MCK

D1 - MKVK

D2 - KH - KS

D5, 7 - GMB

D6 - NSN

For orders on

DA 27 X 28

o/nr. 28/9/26 4th Secondary

Have call on today

Order on I.A's

Two I.A's No. 27 and 28 are taken up together for common discussion since they involve same facts and same reasoning.

I.A-27 is filed seeking under section 151 of CPC seeking to impugne evidence of PW<sub>1</sub> and permit the Son of PW<sub>1</sub>, GPA holder to examine as PW<sub>2</sub>. I.A-28 is filed seeking to re-open case for PW's evidence from dyendar Evidence.

The counsel for the Defendants object by stating that there is no objection for entering the evidence. That either the Plaintiff has not perfected earlier application also and present I.A. being only to drop the proceedings and prays to dismiss the I.A.

Heard from the counsel for the Plaintiff and the defendants

Following point do arise for my determination

"

Whether there are sufficient grounds made out to reach Stage of the case?"

My answer to above point is in "affirmative", for the following

## Reasons

This Suit is of the year 2017 and the Plaintiff was continuously absent for the evidence. However the matter went on proceeding for settlement, which parties submit. That the matter is settled. But the parties have not reported the same to this Court for best known reasons. In the mean time, this Court proceeded to get the case for defendant evidence, by doing fullin Cross examination of Pw, . However, it is pertinent to note. That the Pw, was partly Cross. examined.

Now the Counsel for Plaintiff

is trying to maintain. Song  
 P19, stating that P19, is suffering  
 from ill-health and unable to  
 attend the court and also prays  
 to expunge the evidence of P19.

As rightly objected by the  
 counsel for the 1st defendant.  
 There is no provision to expunge  
 the earlier evidence, when several  
 admissions are given by the witness,  
 who was the proper person to have  
 deposed in this regard. Now the  
 person who is suffering from ill-health  
 cannot be called for giving the  
 evidence. The party has power to  
 examine any person on their behalf  
 which is permitted under law.

Therefore, keeping in view the earlier evidence of Pw, the Son of Pw, can be permitted to be examined.

Since there is heavy delay in filing of application, Pw shall be saddled with some cost. Thus holding that there are grounds made out to recall the stage, above point is allowed in affirmation.

In view of above reasoning following

Order

T.A. No. 27 and 28 filed by the Plaintiffs is herewith allowed.  
With cost of Rs. 2000/-

Son of Pw, also per CPA with

is permitted to be examined  
in full,

Earlier Evidence of PW,  
Suall kept intact.

for cost and further

Evidence of PW, call

on 1/10/1-

        
30/09/1.