

ORDER ON I.A.No. XI AND XII

The instant applications have been filed by learned counsel for the defendant to recall the PW1 for cross-examination by reopening the case.

2. In the memorandum of facts, the learned counsel has stated that the PW1 has given false evidence before this Court. The defendant has preferred a writ petition before Hon'ble High Court of Karnataka in respect of suit property and certain other properties. The same is pending for disposal. The PW1 has to be cross-examined in full to know the truth. If the application is allowed, no hardship will be caused to other side. Hence, prayed to allow the application.

3. The learned counsel for the plaintiff has filed objection to the present applications by denying the same. It is stated that the applications are not maintainable. In spite of providing sufficient opportunities, the defendant has failed to cross-examine the PW1. After lapse of 1½ years, the defendant has come up with the present application.

It is not true that the defendant has preferred writ petition before Hon'ble High Court of Karnataka in respect of suit property. The further cross-examination of PW1 is closed in the month of August 2017 and the alleged writ petition is filed in the year 2019. The defendant has filed the present applications to delay the proceedings. Hence, prayed to dismiss the applications with costs.

4. Heard both sides and perused the materials .

5. The following points arise for my consideration:

1) Whether the defendant has made out grounds to recall the PW1 for cross-examination ?

2) What order?

6. My answers to the above points are as under:

Point No.1 : **In the Affirmative**

Point No.2 : **As per final order
for the following:**

R E A S O N S:

7. **Point No.1 :** The learned counsel for the defendant has filed the present applications to recall the PW1 for further cross-examination by reopening the case. The applications are not accompanied with the affidavits. The learned counsel filed memorandum of facts by stating that he has preferred writ petition before Hon'ble High Court of Karnataka and it is necessary to further cross-examine the PW1 to decide the matter in controversy.

8. The learned counsel for the plaintiff has contended that the applications are not maintainable and filed to delay the proceedings. On perusal of order sheet, it shows that this suit is of the year 2010. After leading of chief-examination by PW1, this Court has given sufficient opportunities to the defendant to cross-examine the PW1. The learned counsel for the defendant has cross-examined the PW1 in part. This Court has also provided sufficient opportunities for further cross-examination. Finally, on 22-08-2017, the PW1 was present and the learned counsel for the defendant prayed time. This Court has rejected the prayer and posted the matter for further evidence of plaintiff. The present applications came to be filed on 30-03-2019. It is to be noted that the delay in filing the applications is not mentioned in the

memorandum of facts. Though, it is contended that the defendant has preferred a writ before the Hon'ble High Court of Karnataka, the learned counsel has not explained the relevancy of writ petition with the present case. Moreover, it is not the case of the defendant that there is stay order or any direction by Hon'ble High Court of Karnataka in the said writ petition. On going through the pleadings in the applications, it is clear that the defendant has not made out proper reasons for delay in filing the applications and failure to complete the cross-examination of PW1. The delay caused by the defendant shall be compensated with heavy costs. At the same time, the defendant shall be given an opportunity to further cross-examine the PW1 and to complete the same on next date of hearing. In view of this, the defendant has made out grounds to allow the applications. Hence, I answer point No.1 **in the Affirmative.**

9. Point No.2: In view of above discussions, I proceed to pass the following:

ORDER

I.A. Nos. 11 and 12 filed by learned counsel for the defendant are hereby allowed on costs of Rs.500/- payable by the defendant to PW1.

The PW1 is recalled for further cross-examination by the defendant. The defendant is directed to cross-examine the PW1 and complete the same on next date of hearing without fail.

Call on 11-11-2019

**Prl. Civil Judge & JMFC,
Kundapura.**