

ORDERS ON I.A.NO.XXII AND XXIII

The plaintiff has filed I.A. No.22 under order Section 151 of CPC praying this Court to re-open the above case for the purpose of the cross examination of DW-1. The plaintiff has also filed I.A. No.23 praying this Court to recall DW-1 for the purpose of the cross examination.

2. The applications are supported with memorandum of facts of the advocate for the plaintiff, wherein it is submitted that the he was out of station on

08/12/2017 and when the case was called out, he could not cross examined the DW1, but he arrived at the afternoon to the Court. This Court called the case in the morning and taken the cross examination of the DW1 as nil. His absence before the Court is not intentional. Hence, the Court may please to re-open the case and recall DW-1 for cross examination. If these applications are allowed, no hardship will be caused to the other side. On the other hand, if these applications are not allowed, he will be put to greatest hardship and loss. Hence, prayed to allow these applications.

3. Per contra, the defendant No.3 has filed serious objection to the above applications by contending that the plaintiff has filed these applications with malafide intention of dragging on the case even further. The DW1 regularly present before the court. The witness was made to wait from morning to evening. Hence, prayed to dismiss the present applications.

4. I have heard the arguments of learned Advocate for the plaintiff as well as learned Advocate for the defendant No. 3.

5. By perusing the materials on record, the point which arise for my consideration is:

“Whether the plaintiff has made out a good ground to
re-open and recall DW1 for cross examination?”

6. My answer to the above point is in the **affirmative**, for the following:

REASONS

7. The present applications filed by the plaintiff to reopen the case of the defendant for the purpose of cross examination of the DW1. The learned advocate for the plaintiff submitted that on the day when the case was posted for the cross examination of DW1, he was in out of station and unable to attend the morning session of the Court. This Court by recording his absence of the advocate, the cross examination of the DW1 was taken as nil. The absence is neither intentional nor deliberate one. On the other hand, the learned advocate for the defendant No. 3 has contended that the DW1 continuously present before the Court in every hearing date and it is the plaintiff made him wait from morning to evening. The applications are filed to harass the defendant No. 3. Already sufficient time granted to the plaintiff to cross examine the DW1. The plaintiff deliberately failed to cross examine the DW1. Hence, prayed to dismiss the applications.

8. Perused the applications and objections and arguments of both the sides. It is true from the records of the suit that already several opportunities were given to the plaintiff to cross examine the DW1. However, it is also true that to resolve the dispute in this case, the cross examination of DW1 is very much necessary. If this Court rejects the applications by adopting hyper technical views, then great hardship will be caused to the plaintiff. If applications are allowed and re-open and recall the DW-1, then matter has to be disposed off on its merits. In view of aforesaid discussion, this Court is of the considered view that it is just and proper to allow the I.A. No. XXII and XXIII. Hence, this Court proceeds to pass the following:

ORDER

I.A. No.XXII and XXIII filed by the plaintiff are hereby allowed subject to payment of Rs. 500/- as cost.

The case is reopened for cross examination of DW1. The learned advocate for the plaintiff is directed to cross examine the DW1 without taking any adjournments.

II Addl.C.J. & JMFC
Kundapura