

ORDERS ON I.A. NO. XXIX

This instant application is filed by the applicant/defendant No.3 under Order XVIII Rule 17 R/w Sec. 151 of CPC to reopen and recall the PW3 for cross examination.

3. In the accompanying affidavit, the applicant/defendant No.3 has wherein it is contended that the alleged agreement was forged one and he has produced original GPA. When he was gone through the document, which is confronted him by the counsel of PW3 while cross-examining him, those documents were not marked due to oversight. Some of the documents were obtained through Right to information Act. Delay in filing this application is not an intentional or deliberate one but bonafide reason. He has valid grounds to continue with this case and also intended to give evidence and supporting documents and witnesses. If application is rejected he would be caused to injustice and which could not be compensated in terms of money. Hence, prayed to recall the PW3 for further cross-examination.

3. Per Contra, Sri. M.J.S., Advocate filed counter statement denying the averments made in the application. He further contended that the application is very vague and does not disclose about which documents to be marked. PW3 is a independent witness secured by the plaintiff and his attesting witness of a document produced. There are no grounds to allow the application. Hence, prays to reject the application with cost.

4. I have heard the arguments from both sides.

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

1. Whether the applicant No.3 has made out a good ground to reopen the stage for cross-examination of PW3?

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

REASONS

7. The present suit is for the relief of specific performance. Now, defendant No.3 came up with this application seeking permission to reopen the stage of further cross-examination of PW3. I have gone through the documents filed after restoration of the case. Therefore, cross-examination of PW3 is taken as nil. Now, the defendant No.3 came with this application to recall PW3 for cross-examination.

8. The case was posted for further evidence of plaintiff before filing of this application. Still further evidence is not commenced. However, if this Court rejected the application by adopting hyper technical views, then great hardship will be caused to the defendants. If application is allowed and re-open the stage for cross-examination of PW3, then matter has to be disposed off on its merits. The delay may be compensated by imposing suitable cost. In view of aforesaid discussion, this Court is of the considered view that it is just and proper to allow the I.A. No. XXIX. Hence, this Court proceeds to pass the following:

ORDER

I.A. No. XXIX filed by the counsel for the defendant No.3 under Order XVIII Rule 17 R/w Sec. 151 of CPC is hereby allowed on cost of Rs. 500/-.

The stage is reopened for cross of PW3.

Call on 29-03-2021

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