

COMMON ORDER BELOW EXH. 243, 247 & 249
IN R. C. S. NO. 215/2004.

1] The defendant No. 3 has filed application at Exh. 243 for issuance of witness summons to defendant Nos. 18 and 19 who have filed counterclaim at Exh. 156. It is the contention of defendant No. 3 that the defendant Nos. 18 and 19 are required to proceed with their counterclaim at Exh. 156. The defendant No. 3 has filed application at Exh. 247 which is in fact written say filed by him in respect of application at Exh. 243. In the application at Exh. 247, it is the contention of defendant No. 3 that he has no knowledge of law and therefore he has filed application at Exh. 243 for issuance of witness summons to defendant Nos. 18 and 19. The defendant No. 3 further contends in application at Exh. 247 that the gist of application at Exh. 243 is that the defendant Nos. 18 and 19 are required to be directed to proceed with their counterclaim at Exh. 156. The defendant No. 3 further filed application at Exh. 249 seeking the same relief as prayed in application at Exh. 243 and 247.

2] The learned advocate for plaintiff and defendant Nos. 10 to 17 filed their say at Exh. 243 and 249 contending that just and proper order may be passed. The learned Advocate for plaintiff filed say at Exh. 247 contending that the application is false and liable to be rejected.

3] Heard the learned Advocate for both the parties. Perused the record.

4] Perusal of record shows that the defendant Nos. 18 and 19 have filed counterclaim at Exh. 156 to which the plaintiff has filed

written-statement at Exh. 159 and the defendant No. 3 has filed his written-statement at Exh. 226.

5] Record shows that the plaintiff No. 2 led his evidence and closed his evidence by filing pursis at Exh. 171 and 246. The defendant Nos. 2 to 4 lead their evidence and closed their evidence by filing pursis at Exh. 54, 187 and 197. The defendant Nos. 10 to 17 led their evidence and closed their evidence by filing pursis at Exh. 237 and 240. The defendant Nos. 18 and 19 filed pursis at Exh. 244 and 245 contending that the evidence led by defendant No. 13 in respect of the suit as well as counterclaim be treated as their evidence and they do not want to lead additional evidence.

6] These facts show that the defendant No. 3 has already led his evidence and closed his evidence by filing pursis to that effect as stated above. These facts further show that the defendant Nos. 18 and 19 did not enter into witness box and filed evidence close pursis vide Exh. 244 and 245 as stated above. Though the defendant Nos. 18 and 19 have filed counterclaim, they did not enter into witness box and led oral evidence in respect of their counterclaim personally. As stated above, they have filed pursis vide Exh. 244 and 245.

7] The defendant No. 3 by filing these application seeking direction to defendant Nos. 18 and 19 to lead their evidence in respect of their counterclaim at Exh. 156. However, it appears from above stated record that the defendant Nos. 18 and 19 are not willing to enter into the witness box to lead their evidence in respect of their counterclaim. A party cannot be forced to enter into witness box for the purpose of leading evidence in support of his/her pleading which would be a plaint or counterclaim. Though, the defendant Nos. 18 and

19 by filing pursis at Exh. 244 and 245 contend that the evidence led by defendant Nos. 13 in respect of suit as well as counterclaim be treated as their evidence, the merits and legal value of said pursis would be determined as the time of final hearing of the suit. Whether the defendant Nos. 18 and 19 are entitled to say that the evidence led by defendant No. 13 be treated as their evidence would be decided after hearing the arguments of both the parties at the time of final hearing. In case it is found that the defendant Nos. 18 and 19 are not entitled to make contentions as made by them in pursis at Exh. 244 and 245, the defendant Nos. 18 and 19 would have to suffer its consequences.

8] Considering the above facts and discussion, the defendant Nos. 18 and 19 cannot be directed to enter into a witness box and to lead their oral evidence in respect of their counterclaim at Exh. 156. Here, it is pertinent to note that as per order passed below Exh. 1 dated 22/06/2021, as the defendant Nos. 18 and 19 remained absent and despite of giving opportunity failed to adduce evidence, the evidence of the defendant Nos. 18 and 19 was closed. Considering these facts, the applications at Exh. 243, 247 and 249 are liable to be rejected. Hence, the following order is passed.

ORDER

Applications at Exh. 243, 247 and 249 are hereby rejected.

(Dictated and pronounced in open Court.)

Place : Shrigonda.
Date: 29/08/2022.

(Girish M. Sadhale)
Civil Judge, Senior Division,
Shrigonda.