

ORDER BELOW EXH.164
(Passed on 11.01.2018)

Present application is filed by plaintiff under order 18 Rule 17 of the C. P. C. According to him the suit is filed for Perpetual injunction. Defendant no. 1 to 4 opposed claim of plaintiff and filed counter claim. The evidence of plaintiff is recorded below Exh. 103. The evidence of plaintiff was only limited to his suit. The evidence regarding to the counter claim of defendants is remained to be given. Defendants claiming rights over the suit property through counter claim. The rights of plaintiff involved in the suit property which is immovable property. Hence, plaintiff seeking permission to lead additional evidence in addition to the earlier examination in chief. Plaintiff also relied upon **Anand Rangrao Ingale Vs.. Govind Rangrao Ingale 2012[5] ALL M.R. 228**, contending that witness can be recalled for examination and re-examination by invoking power provisions of sec. 151 of C.P.C. This inherent power is not affected by provisions of order 18 rule 17 of the C.P.C. 1908.

2. On the other hand, defendants opposed application on the ground that the application is totally false and fabricated and filed only with intention to prolong the matter. Issues are framed on 28.09.2010. Plaintiff filed his evidence on dated 30.11.2011 vide Exh 103. Plaintiff examined P.W. 2 i.e. Circle Inspector, P.W. 3 to P.W.5, which were cross examined by defendants. Then also on 01.07.2017, 05.07.2017, 11.07.2017, 17,07.2017 the matter is adjourned for evidence of plaintiff. On 25.07.2017 this application is moved. Hence as the matter is for evidence close pursis, plaintiff intentionally causing delay. Plaintiff lead his evidence with full knowledge but intentionally filed this application. As plaintiffs evidence is already over this application is not tenable at this stage. Hence defendants prayed for rejection of application with heavy

costs.

3. Perused records and documents filed by applicant. Heard learned Advocates for both the parties. Present suit is for Perpetual injunction. Defendants claiming rights over the suit property through counter claim. As per plaintiff his previous evidence was limited to his claim. Now he wants to lead evidence in response to the counter claim of defendants. Though plaintiff examined 7 witnesses including himself, the evidence of plaintiff is yet to be closed. The evidence of defendants are yet to be started.

4. As per Rule 17 of Order 18 of the Civil Procedure Code, the court may at any stage of suit recall any witness who has been examined and subject to law of Evidence for the time being in force put such questions to him as the court may think fit. Moreover, as per Rule 3 of Order 18, Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option either produce his evidence generally on those issues or reserve it by way of answer to the evidence produced by the other party.

5. Procedural technicalities do sometime provide an unfortunate situation but a litigant cannot and ought not to be deprived of a fair opportunity of presenting a case before a court. Order 18, Rule 17 of the Code of Civil Procedure were to be exercised in exceptional circumstances. Moreover recalling of a witness under Order 18, Rule 17 is not restricted to action on the part of a Court on its motion and that it can recall a witness at the instance of one of the parties. A party could not be allowed to suffer for any omission or lapse on the part of his Counsel. The rules of procedure are meant to advance the cause of justice.

6. Though plaintiff has examined 7 witnesses and no any exceptional circumstances is specifically mentioned, looking to the nature of suit and counter claim by defendants, plaintiff also have opportunity to reserve his right to lead evidence. Similarly, it is necessary to limit the extent of permitting the examination-in-chief because it would result in a dangerous situation and resulting in total confusion. Under these circumstances, if the plaintiff is not allowed to examine himself, it would amount to debar a party from proving his case. In this case plaintiff and his advocate also affirmed that he only want to examine plaintiff only to the extent of counter claim of defendants and he does not want to recall any other witnesses.

7. Hence, it would be proper to allow plaintiff to record his further evidence in relation to that material which was omitted from the examination-in-chief, in particular limited to the counter claim of defendants and the documents, if any, in support thereof. The defendants shall thereafter be permitted to further cross-examine the plaintiff on the basis of the further evidence that is so recorded. Hence following order will suffice the purpose.

ORDER

1. Application is allowed subject to cost of Rs. 500/- to be paid to defendant.
2. Plaintiff is directed to lead additional evidence if any as directed as early as possible without causing delay.

Date:-11.01.2018

(Y.D.Koinkar)
C.J.J.D. Chakur