

MHYA150000322013

R.C.S.No.5/2013Gopal Vs. Devanand.**ORDER BELOW EXH.57 IN R.C.S. NO.5/2013**

( Dated 13.10.2025 )

This application filed by the defendant under section 114 r/w 151 of the Civil Procedure Code for review order below Exh.53. This application pending since 20.01.2022.

2. This application pending since 20.01.2022. The matter is pending for the arguments of both the sides since long. But, they did not appeared for arguments despite being given the sufficient opportunity, the application is being disposed of without arguments from both the sides.

3. The defendant stated that, the Hon'ble Court has passed the order on Exh.53 dated 06.02.2020 and thereby rejected the application of the defendant, which is the application for recalling of the plaintiff witness No.1 Gopal Sewaji Rathod for further cross-examination. The defendant further contended that, the plaintiff witness No.1 is already examine on oath and also the defendant had adduced cross-examination, at that time the document filed by the plaintiff as earnest note dated 26.12.2011 was not proved by the evidence of this plaintiff, the said document is proved vide Exh. No. 49 through the evidence of another witness i.e. P.W. No.2 therefore, the recital of this proved document can be read in evidence, while conducting cross-examination of the plaintiff. The defendant is deprived to cross

above said document and has not put any suggested question to the plaintiff regarding transaction of this proved document at Exh.49 and question related to that effect of the suit property. Therefore, it was necessary to recall to plaintiff witness No.1 for further cross-examination, accordingly the defendant had moved this application, which came to be rejected.

4. Further the defendant stated that, after perusal of the evidence of the plaintiff witness No.1 therein the defendant has not given the opportunity to cross-examination on the point of Exh.49, but without any prejudice to the plaintiff and any fault of the defendant the Hon'ble Court has take otherwise and closed the door of the defendant for seeking justice by passing the order on Exh.53. It is submitted that the application below Exh. 53 was very simple and say of the plaintiff thereon was not strongly opposed and the defendant is ready to pay bhatta of witness and assured that adduced to cross further examination without any fault therefore, the defendant has filed application below Exh.53. The application for recalling of the plaintiff witness No.1 Gopal Sewaji Rathod for further cross examination, without gone through the record of the case. The Hon'ble Court has passed order below Exh.53, which came to be rejected on the ground that the reason given is not at all reasonable and vague. Hence, application being devoid of any merit, is rejected. The defendant is deprived to cross above said document and has not put any suggested question to the plaintiff regarding transaction of this proved document at Exh.49 and question related to that effect of

the suit property. Therefore, it was necessary to recall to plaintiff witness No.1 for further cross-examination,

5. Further, the defendant stated that, the Hon'ble Court has erred to take notes and vide scope of the provision under section 151 of the Code of Civil Procedure, therein the Hon'ble Court has vested inherent power to do work in the interest of justice, for seeking the justice the Hon'ble Court can exercise the power vested in the above provision and can issue direction to the defendant to cross-examination of the plaintiff, in this regard the Hon'ble Apex Court taken in view under this provision that the court may allow to permit the cross-examination to the defendant, but the Hon'ble Court wrongly come to the conclusion and rejected the meritorious application of the plaintiff and passed erroneous the order on below Exh. 53 which needs to be reviewed by quashing and set aside. It is justifiable to review the order below Exh.53 and prayed to allow the present application.

6. The plaintiff filed say and opposed on the grounds that, reviewed cannot be claimed because if special remedy is available then this can not be exhausted. Hence, the plaintiff prayed to reject the application.

7. On perusal of record it appears that, the suit is filed for specific performance of the contract. Matter is pending for evidence of the defendant. The plaintiff filed the affidavit of evidence at Exh.36. The cross-examination of the plaintiff completed on 14.11.2019. Thereafter, the plaintiff examined P.W.

No.2 at Exh.48. The cross-examination of P.W. No.2 completed on 11.12.2019. During the evidence of P.W. No.2, copy of the agreement to sale dated 26.12.2019 has been exhibited as exhibit No.49.

8. The defendant wants to cross-examine the plaintiff regarding the agreement to sale. Hence, the defendant filed this review application. The defendant has filed application below Exh.53 on 06.02.2020 to recall the plaintiff for further cross-examination. My learned predecessor has passed order and reject the application on grounds that, the application below Exh.53 filed after evidence of the plaintiff is closed and there was no valid grounds. Now, the defendant filed this present application to review the order passed below Exh.53 and stated that, “the plaintiff witness No.1 is already examine on oath and also the defendant had adduced cross-examination, at that time the document filed by the plaintiff as earnest note dated 26.12.2011 was not proved by the evidence of this plaintiff, the said document is proved vide Exh. No. 49 through the evidence of another witness i.e. P.W. No.2 therefore, the recital of this proved document can be read in evidence, while conducting cross-examination of the plaintiff, the defendant is deprived to cross above said document and has not put any suggested question to the plaintiff regarding transaction of this proved document at Exh.49 and question related to that effect of the suit property. Therefore, it was necessary to recall to plaintiff witness No.1 for further cross-examination”.

9. At the outset it is worthwhile to discuss the provisions regarding recall the witness.

10. Order 18 Rule 17 of the Code of Civil Procedure and Section 151 of the Code of Civil Procedure provide power to Court to recall witness.

11. **Order 18 Rule 17 of the Code of Civil Procedure:-** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

12. The above provision allow the Court to recall witness who has already examined for clarification on any doubts or issue that may have been arisen from the evidence presented. The Court can use this power suo-motu or on request from party. But, it is not a right for the party to use to supplement their case.

13. **Section 151 of the Code of Civil Procedure :-** In certain circumstance court may grant a party the opportunity to recall a witness for further examination or cross-examination under its inherent power as per section 151 of the Civil Procedure Code.

14. It is also true that, the provision of section 151 of the Civil Procedure Code gives the court power to "make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

15. It is the settled principle of law that, plaintiff is "Dominus Litis" i.e., master of his case.

16. The plaintiff is a master of his case. Therefore, the plaintiff has full discretion as to how and through whom to present evidence. Therefore, it cannot be said that the plaintiff is required to file copy of the agreement to sale during his evidence.

17. The plaintiff has filed the copy of the agreement to sale through P.W. No.2. P.W. No.2 deposed that the agreement to sale was executed by the defendant in his presence in favour of the plaintiff. In such circumstance, the defendant had every opportunity to cross-examine P.W. No. 2 regarding the agreement to sale.

18. On minutely perusal of evidence of the P.W. No. 1 at Exh.36 and P.W. No. 2 at Exh.48. I not found any ambiguity, doubt in their chief examination and cross-examination. I not found any new fact or evidence come after initial cross-examination of P.W. No.1.

19. Furthermore, it is pertinent to note that, the present suit is filed for specific performance of the contract, it is the contention of the plaintiff that, the agreement to sale is executed by the defendant in favour of the plaintiff. In such situation the defendant was an opportunity to ask every question regarding the agreement to sale to the plaintiff in cross-examination.

20. It cannot be said that the defendant did not have an opportunity to ask questions about the agreement to sale because the document was not produced by the plaintiff in his evidence.

Furthermore, it does not appear to be appropriate and fair to recall the plaintiff to ask questions again about the agreement to sale and to cross-examine him when there was a prior an opportunity to the defendant.

21. The defendant had every opportunity to cross-examine P.W. No.1 and P.W. No.2 regarding the agreement to sale. The defendant failed to asked specific questions regarding the agreement to sale, it cannot be valid reason to recall P.W. No.1. In such circumstance, the defendant cannot recall plaintiff's witness for further evidence. The defendant does not have right to recall P.W. No.1 for further cross-examination.

22. Furthermore, I not found that the order below Exh.53 is vague, erroneous and without reasons. I not found any mistake or error apparent on the face of the record. There are no proper and justifiable reasons for the allow the present application and I not found any other sufficient reason to set aside the order passed below Exh.53.

23. In the light of aforesaid discussion, considering the pleadings, evidence and documents on record. I come to conclusion that there is not clearly made out a case for review within the meaning of Section 114 and Order 47 Rule 1 of Civil Procedure Code and I not found substance in the application to recall P.W. No.1 for further cross-examination and set aside the order passed below Exh.53. Hence, I proceed to pass the following order.

**ORDER**

The application at Exh.57 is hereby rejected.

(Order pronounced in the open Court.)

Place : Ner

Date : 13.10.2025

(G.C. Fulzalke)

Civil Judge Jr. Division,  
Ner.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file order are same word to word as per the original order.

Name of Stenographer	:-	Ku. B. N. Nare (Grade-III)
Court	:-	Civil Judge Jr. Dn., Ner.
Date	:-	13/10/2025
Order signed by		
the Presiding Officer on	:-	14/10/2025
Order uploaded on	:-	14/10/2025