

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,  
THANJAVUR.**

**Present :Tmt. P.R.Supraja, M.L.,  
II Additional District & Sessions Judge,  
Thanjavur.**

Friday the 15<sup>th</sup> day of November 2024  
(Thiruvalluvar Aandu 2055- Ippasi Matham 29<sup>th</sup> day)

**I.A.137/2024 in O.S.No.36/2020**

T.Ashok Kumar

.....Petitioner/ Plaintiff

/Vs/

Jayaprakash

.....Respondent/Defendant

This petition having come up for final hearing before me on **13.11.2024** in the presence of **Thiru. S. Manickavelpandian**, Advocate for the Petitioner and of **Thiru.K. Parthiban**, Advocate for the respondent and upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

**ORDER**

The petitioner/plaintiff has filed this petition u/o. 18 Rule 17 of CPC to recall the D.W.1.

**The Gist of the affidavit filed by the petitioner/Plaintiff as follows:**

(2) The petitioner is the Plaintiff in the suit. The original filed by the plaintiff for recovery of money against the respondent/defendant. When the suit was posted for D.W.1 cross on 10.9.2024 the petitioner was suffering from viral fever. So, he could not contact his counsel to give instruction for cross examination of D.W.1. Due to non-appearance of the petitioner the court closed the cross examination of D.W.1 by the plaintiff side. Hence, it is

just and necessary to recall the D.W.1 to cross examine the petitioner/plaintiff side to prove his case for proper adjudication. Unless this petition is allowed, the petitioner will be put to irreparable loss. Hence. Hence this petition is to be allowed.

**The Gist of the Counter filed by the respondentas follows:**

(3) This petition is not maintainable in law and on facts. The averments of the affidavit that when the suit was posted on 10.9.2024 for cross examination of D.W.1, the petitioner/plaintiff was suffering from viral fever is false. It is clear that the intention of the petitioner/plaintiff that to dragon the suit without cross examine the respondent. Hence, this petition is liable to be dismissed.

**(4) Point for consideration:**

Whether the petitioner is entitled to the relief sought for?

**POINT:**

(5) Both side arguments heard. Records perused. The learned counsel for the petitioner would submit that The original filed by the plaintiff for recovery of money against the respondent/defendant. When the suit was posted for D.W.1 cross on 10.9.2024 the petitioner was suffering from viral fever. So, he could not contact his counsel to give instruction for cross examination of D.W.1. Due to non-appearance of the petitioner the court closed the cross examination of D.W.1 by the plaintiff side. Hence, it is just and necessary to recall the D.W.1 to cross examine the petitioner/plaintiff side

to prove his case for proper adjudication. Unless this petition is allowed, the petitioner will be put to irreparable loss. Hence. Hence this petition is to be allowed.

(6) Per contra, the learned counsel for the respondent would submit that the averments in the affidavit that when the suit was posted on 10.9.2024 for cross examination of D.W.1, the petitioner/plaintiff was suffering from viral fever is false. It is clear that the intention of the petitioner/plaintiff that to drag the suit without cross examine the respondent. Hence, this petition is liable to be dismissed.

(7) I have carefully considered the rival submissions and perused the materials on record. The present petition is filed by the Petitioner/plaintiff to recall D.W.1. On perusal of records it is seen that the suit is one for recovery of money based on pronote. In this suit, on the plaintiff's side witnesses were examined and exhibits were marked. On the defendant's side D.W.1 examined and exhibits were marked and posted for cross examination of D.W.1 for many hearings for the past 9 months. Finally, on 19.9.2024 D.W.1 cross closed and posted for further D.W.'s. At this stage the petitioner filed this petition to recall D.W.1. Though the reason stated is not supported by any documentary evidence, still in order to afford opportunity to the plaintiff's counsel to cross examine D.W.1 and contest the case on merits, I am inclined to allow this petition in the interest of justice. The point is answered accordingly.

In the result, this petition is allowed. No costs.

This order is dictated to the Steno-Typist by me, typed by her directly in computer, corrected and pronounced by me in the open court, this the 15<sup>th</sup> day of November 2024.

**II Additional District & Sessions Judge,  
Thanjavur.**

**Petitioner and Respondents side**

**Exhibits and Witnesses : Nil**

**II Additional District & Sessions Judge,  
Thanjavur.**

**Order**

**I.A.137/2024 in O.S.No.36/2020**

**Dated: 15.11.2024**