

**IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.**

**Present : Tmt. M. Breetha, M.L.,
II Additional District Judge,
Thoothukudi.**

Friday, this the 10th day of July 2026

I.A. No. 1/2026 in I.A. No. 2/2026

in

O.S. No. 103/2022

1) K.K.V. Chakra Limited, a company registered
under the Companies Act through its
Managing Director

2) K.K.V. Chakra Limited, a company registered
under the Companies Act through its
Authorised Signatory N.Esakki Muthu

... Petitioners / Defendants

/ versus /

Kannappan

... Respondent / Plaintiff

These petitions are coming before me for final hearing on 18.06.2026 in presence of Thiru.S.B.Kamalanathan, Learned Advocate for Petitioners/Defendants and in the presence of Thiru.N.Selvaraj, Learned Advocate for Respondent/Plaintiff and upon hearing both side arguments and on perusal of records and having stood over till this day for consideration of this court, this court delivers the following:

COMMON ORDER

IA 1/2026 :

This petition has been filed by the petitioners/defendants U/s. 151 CPC to reopen the case for cross examination of PW2 and PW3.

IA 2/2026 :

This petition has filed by the petitioners/defendants under Order 18 Rule 17 and 151 of CPC seeking permission to recall PW2 and PW3 for cross examination on thier side.

2. Brief averments of the affidavit and petitions:

The petitioners are the defendants in the main suit and have averred that the respondent/Plaintiff has filed the suit seeking damages and the main suit has been posted for defendant's side evidence and that the respondent was examined as PW1 and was cross examined by the petitioners and that the respondent has examined PW2 and PW3 and as the petitioners were engaged with their work at Coimbatore, they couldn't give instructions to their advocate to cross examine the witnesses and that PW2 and PW3 were not cross examined on the side of the petitioner and that non-cross examination of PW2 and PW3 is neither willful nor wanton and therefore, it is just and necessary to reopen the case and to recall PW2 and PW3 for cross examination and hence, constrained to file these petitions to reopen the case and to recall PW2 and PW3 for cross examination and prays to allow the same.

3. Contentions of the counter filed by the respondent/plaintiff:

The respondent has denied all the averments made in the petition and have contended that PW2, the Execution Engineer, Tamilnadu Electricity Department, Kovilpatti and PW3, the Engineer were summoned through court and examined as witnesses on the side of the plaintiff and that the above said facts are within the knowledge of these petitioners and that the petitioners purposely avoided to cross examine the said witnesses to drag on the proceedings and have come forward with this petition with false facts and that this petition filed at the stage of defendant side evidence is not maintainable and that the reasons stated by the petitioners are not genuine and prays for dismissal of the petitions with costs.

4. Points for consideration:-

- (1) Whether these petitions can be allowed or not?

5. Point No.1:-

Both sides are heard. Records have been perused. The petitioners are the defendants and the respondent is plaintiff in the main suit.

6. The main suit has filed seeking damages. In the main suit, plaintiffs' side evidence was closed and the case stood posted for defendant side evidence. At this stage, the petitioners/defendants have come forward with these applications to reopen the case and to recall PW2, PW3 for cross examination on their side. It has been strongly objected by the respondent by contending that PW2, the Execution Engineer, Tamilnadu Electricity Department, Kovilpatti and PW3, the Engineer were summoned through court and examined as witnesses on the side of the plaintiff and that the above said facts are within the knowledge of these petitioners and that the petitioners purposely avoided to cross examine the said witnesses to drag on the proceedings and have come forward with this petition with false facts.

7. At this juncture it should be relevant to refer to the decision of the Honourable Supreme Court in the case K.K.Velusamy /Vs/ N.Palanisamy reported in (2011) 4 SCALE 61, equivalent to (2011) 3 MAD L.W.738, in which the Apex Court has held the principle to be borne in mind while dealing with the application filed to reopen the case to adduce evidence after hearing arguments. In Para-16 of the said judgment, it is held as follows -

"We may add a word of caution. The Power under section 151 or Order.18 Rule.17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the code to expedite trials. But where the application is found to be bonafide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the

issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The Court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made aground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application".

8. Applying the above said principle in the case on hand, now it is necessary to find out whether there is merit to allow this application? The petitioners/defendants have averred that as the petitioners were engaged with their work at Coimbatore, they couldn't give instructions to their advocate to cross examine the witnesses and that it is just and necessary to cross examine PW2 and PW3 to prove his case.

9. Being the defendants in the case, this court is of the view that the petitioners have a legal bounden duty to prove their defence and to provide a reasonable opportunity to extract the truth from the witness by way of cross examination. Moreover, witnesses were not examined on the side of the defendants.

In such circumstances, this court is of the opinion that by allowing these applications, no prejudice would be caused to the other side. At the same time, as laid by the Honourable Apex Court, the delay caused by the petitioner and the hardships caused to the respondents shall be compensated by costs and further delay could be avoided by fixing specific time schedule to complete the examination of witnesses.

I.A. No. 1/2026 :

In the result, this petition stands allowed on a condition that the petitioners shall pay a sum of Rs.2,000/- (Two Thousand only) as cost of this petition to the respondent on or before 24.07.2026; failing which, the petition stands automatically dismissed. Call on 24.07.2026.

I.A. No. 2/2026 :

In the result, this petition stands allowed on a condition that the petitioners shall pay a sum of Rs.2,000/- (Two Thousand only) as cost of this petition to the respondent on or before 24.07.2026; failing which, the petition stands automatically dismissed. Call on 24.07.2026.

This order is dictated by me to the stenographer and transcribed and typed by her, in the computer and corrected by me and pronounced in the open court in this 10th day of July 2026.

**II Additional District Judge,
Thoothukudi.**

Petitioner side witness : NIL

Petitioner side Documents: NIL

Respondent side witness : NIL

Respondent side Documents: NIL

II ADJ, Thoothukudi
Draft/Fair
Common Order
I.A. No.1/2026 and
I.A. No.2/2026
in
O.S. No.103/2022
Dated : 10.07.2026