

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE (FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Thiru.P.V.Sandilyan, M.L.,
Additional District Judge (FTC), Vellore.

Monday, the 20th day of July, 2026

I.A. No.4/2026 in O.S.No.44/2020

Tmt.S.Kalpana Sheba Kumari @ Shobakumari . . . Petitioner/ Defendant
Versus

Mr.P.Loganathan . . . Respondent/Plaintiff

This petition came up before this court for final hearing on 16.07.2026, in the presence of Tr.G.Ravi and Tr.G.Sivakumar, counsels for the petitioner; Tr.S.Vijayakumar, counsel for the respondent; and upon hearing the arguments of both sides, upon perusal of case records and having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed under Order XVIII Rule 17, Sec.151 of C.P.C. to recall of PW1 for cross examination.

2. The averments of the affidavit are as follows:-

The petitioner is the defendant in the above suit filed. The respondent filed the main suit for recovery of money on the basis of forged documents. The respondent filed proof affidavit posed for cross examination on 02.07.2026, on the day the petitioner was suffered fever, she could not appear before this court, her advocate also engaged in another court, her advocate

finished his work in another court, and reached this court, and known that she was called absent no representation 12.15 pm, PW1 cross examination was closed. Petitioner's advocate absence and herself is not happened wanton one, on that her advocate is ready to cross of PW1, hence she filed this application to reopen and recall of PW1. she had very good case, kindly allow the application, there is no drag the proceeding on behalf herself. Hence prays to allow this petition.

3. The brief averments of the Counter filed by the Respondent/Plaintiff are as follows:-

3.1 The petition is not maintainable either in law or on facts. The allegation stated in para 2 of the affidavit are false. On 02.07.2026 the petitioner suffered from fever and she could not appear in person before this court. There was no representation on that day. Further the said case was posted from 17.06.2026 for cross continuation to 02.07.2026 with an note NFA and so this court closed the cross examination of PW1 and posted for further evidence. There is no valid reason of cause shown for reopen and for recall PW1 medical certificate produced for her ill-health. Hence, it is prayed to dismiss the petition with cost.

4. There is no oral and documentary evidence on both sides.

5. The point for consideration in this petition is, ***Whether this petition is to be allowed or not?***

6. Point:-

6.1 The petitioner is the defendant in the main suit. The petitione filed under Order XVIII Rule 17 and Sec.151 of CPC to recall of PW1 for cross examination.

6.2 The respondent filed the suit based on pronote for recovery of suit pronote amount. The respondent himself examined on 27.04.2026 and marked 48 documents on his side to prove his case. When the case is posted for second time for cross examination neither the petitioner nor her counsel appeared and as such PW1 cross examination on the side of the respondent was closed. Immediately the petitioner filed the petition to recall the PW1 for cross examination. When the initial burden lies on the respondent and if discharged then presumption under section 118 will also arise in favour of the respondent. It is the onus lies on the petitioner to give rebuttal evidence therefore chance must be provided to the petitioner to challenge the evidence of the respondent. Hence this petition is deserves to be allowed for the reason the suit must be decided on merits not on technicalities.

In the result this petition is allowed. No costs.

Dictated to the Steno-Typist, directly typed by her in computer, corrected and pronounced by me in the Open Court, on this the 20th day of July, 2026.

**Additional District Judge(FTC),
Vellore.**

Both side Witnesses and Exhibits:- - NIL -

**Additional District Judge(FTC),
Vellore.**