

**In the Court of the Principal District and Sessions Judge,
Virudhunagar District at Srivilliputtur**

**Present:-Thiru.A.Kanthakumar, M.L.,
Principal District and Sessions Judge,**

Monday, the 22nd day of June 2026

I.A.No.09/2026

in

O.S.No.21/2018

CNR.No.TNVR01000304-2018

M/s. Sri Lalithambigai Cotton Agency,

represented by its partner,

P.V. Subramaniaraja

... Petitioner/Plaintiff

/Vs/

1.A. Srinivasan

2.A. Vijayakumar

... Respondents/Defendants

This petition coming before me for final hearing on 09.06.2026 in the presence of Tr.A.Suwaswasaran, Advocate for the petitioner and Tr.K.Arthanari, Advocate for the Respondents and upon hearing the argument of both the side and perusing the records this Court delivered the following,

ORDER

The petitioner/plaintiff has filed this petition under Order 18 Rule 17 read with Section 151 of CPC prays to recall D.W.2 and permit the petitioner to cross-examine him.

2) The brief averments of the petition:-

(i) The petitioner is a partner of the plaintiff firm, M/s. Sri Lalithambigai Cotton Agency. The petitioner filed the present promissory note suit against the defendants. Both parties appeared through their counsel, filed their pleadings, and the trial proceeded. After completion of the evidence on both sides, the case was posted for arguments on 08.09.2025. Thereafter, the defendants filed petitions to reopen the case and examine an additional witness. The Court allowed the petitions, and D.W.2 was examined on 19.01.2026. On that day, the petitioner's counsel was engaged in another Court in a different case. Therefore, D.W.2 could not be cross-examined on behalf of the petitioner. This was due to unavoidable circumstances and not intentional. It is therefore necessary to recall D.W.2 to enable the petitioner to cross-examine him. If such an opportunity is not granted, the petitioner will suffer serious and irreparable loss. Hence, he prays to recall D.W.2 and permit the petitioner to cross-examine him.

3) The brief averments of the Counter:-

(i) The petition filed by the petitioner is false, incorrect, and not maintainable in law. Except the facts specifically admitted in this counter, all other allegations made by the petitioner are denied. The petitioner filed the suit based on a false promissory note. Knowing that the suit may be dismissed, the petitioner has been filing one petition after another only to delay the trial and trouble the respondents. It is true that D.W.2 was

examined on 19.01.2026. However, the petitioner's statement that his counsel could not cross-examine D.W.2 because he was engaged in another Court is false. The request to recall D.W.2 on that ground is not genuine. On 19.01.2026, D.W.2 appeared before the Court with the documents. Since the petitioner's counsel was absent, the case was passed over. Even after that, the petitioner did not immediately file a recall petition. The recall petition was filed only on 13.02.2026. This clearly shows that the petition was not filed in good faith. The affidavit filed by the petitioner is not true or reliable. The present petition has been filed only to delay the trial. Therefore, it is prayed that this Court may be pleased to dismiss the present petition with costs.

4) No oral evidence was adduced by either side. No exhibits were marked on either side.

5) Heard both sides. Records perused.

6) The point for consideration in this petition is whether the petition deserves to be allowed or not?

Point:-

7) On perusal of the records, it is seen that the petitioner/plaintiff filed the present suit for recovery of money against the respondents/defendants. The defendants filed their written statement, and issues were framed. Thereafter, P.W.1 and P.W.2 were fully examined. D.W.1 was also fully examined, and D.W.2 was examined on 19.01.2026.

On that day, the learned counsel for the plaintiff could not cross-examine D.W.2 as he was engaged in another Court in connection with a different case. Therefore, the suit now stands at the stage of defendant side further evidence. The petitioner/plaintiff has filed the present petition under Order 18 rule 17 of CPC to recall D.W.2 for the purpose of cross-examination. The respondent opposed the petition contending that it has been filed with a mala fide intention to delay the proceedings.

8) It is settled law that the provisions of Order 18 Rule 17 are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Court may recall a witness either on its own motion or on application by any party to the suit. If evidence on reexamination of a witness has a bearing on the ultimate decision of the suit, trial court may permit recall of such witness for reexamination in chief, permission to defendants to cross examine the witness.

9) In this regard, the Hon'ble Supreme Court in Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate held that though Order 18 Rule 17 CPC is not intended to fill up omissions in evidence, the power to recall a witness may be exercised where such recall is necessary for the just decision of the case.

10) In the present case, the petitioner has filed this petition only to cross-examine D.W.2 and not to fill up any omission in the evidence. However, considering the reasons stated by the petitioner, the fact that the

suit is still at the stage of Defendant side further evidence, and in order to afford one more opportunity to the petitioner/plaintiff to cross-examine D.W.2. Therefore, in the interest of justice, this Court is inclined to allow the petition. Accordingly, this point is answered.

11) In the result, this Petition is allowed. No costs.

Dictated to the Steno-typist, directly computerized by her, corrected and pronounced by me in open Court, this the 22nd day of June 2026.

**Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.**

No witnesses and exhibits on both side- Nil

**Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.**

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O.S.No.21/2018
Fair/Draft – Order
PDJ/SVPR
Dated:22.06.2026