

ORDERS ON IA.No.12 & 13

These applications are filed by the respondent No.1 U/sec.151 of CPC and U/O 18 Rule 17 R/w Sec.151 of CPC. Both the applications are interrelated and connected to each other to avoid repetition I have taken them jointly for discussion.

2. Brief facts of the annexed affidavits of the applicant are as under:-

That the respondent No.1 herein had filed a suit in O.S.9593/2015 before this court against the petitioner and

respondent No.2 herein for recovery of money. That after contesting the matter case has been disposed off by way of judgment and decree dated 01.04.2022 and the court has ordered directing the petitioner and respondent No.2 to pay suit claim amount with interest. That in pursuance of the said judgment and decree an execution petition has been filed vide E.P.No.329/2022. The petitioner herein was the defendant No.2 in the said suit now filed this petition on false, imaginary and baseless grounds seeking recall of judgment and decree by suppressing the material facts. The petitioner succeeded in obtaining an order of stay against operation and execution of decree by misleading the court. This respondent has filed detailed objections disputing the petition averments, the petitioner himself got examined as PW.1 in support of his case. That during pendency of the present case and after concluding the evidence of both parties, the petitioner herein has filed Crl.Mis.No.5174/2022 u/Sec.340 R/w Sec.195(b) of Crpc making various allegations of fraud, forgery etc., in respect of documents placed before this court. That while making such allegations the petitioner herein has suppressed various facts in documents. Therefore became necessary the petitioner has to be cross examined on certain documents and facts its came into like subsequent to posting the case for arguments and orders. Therefore it is just and necessary to recall the PW.1 by reopening the

stage of the case for the purpose of further cross examination. If applications are allowed no harm will cause to the opponent, on the other hand if it is not allowed the applicant will put irreparable loss, hence prayed for allowing the applications.

3. These facts have been denied by the opponent/respondent in the common objection statement contended that, applications are not maintainable either in law or in facts of the case. The respondent No.1 herein and plaintiff in O.S.No.9593/2002 was obtained judgment and decree in collusion with defendant No.1 of that case and respondent No.2 herein by playing fraud on the court. The defendant No.2 of that suit was not residing in the address shown in the cause title of the suit, taking undue advantage of the same the respondent No.1 herein purported to be served in summons thereby placed exparte. This fact came to be knowledge of the petitioner only after filing the execution petition immediately after obtaining the necessary documents filed this Mis.Petition seeking aside exparte order. The witness has already been cross examined in length no valid reason available for recalling the PW.1. The applicant has deposed to false claim the grounds urged in the applications for considering the prayer sought in them are unsustainable. The fact of filing the Crl.Mis.case with regard to the fraud committed and

service of summons of defendant No.1 in O.S.No.9593/2015 is true. It is nothing to do with the recalling of PW.1, the applications are devoid from merits filed only with an intention to protract the proceedings. If they are allowed untold hardship will cause to the petitioner, on the other hand if they are not allowed no harm will cause to the respondent No.1. The applications are deserves to be dismissed accordingly prayed for dismissal of the same.

4. Heard the arguments of both side. Perused the applications, annexed affidavits, objections and available materials placed on record.

5. Following points arisen for my consideration are:-

- 1) Whether applications are maintainable?
- 2) What Order?

6. My findings to the above points are as under:

Point No.1:- In the Affirmative

Point No.2:- As per the final Order
for the following:

REASONS

7. Point No.1:- It is the case of the applicant that after conclusion of the evidence of both parties some new facts and incidents have been taken placed. So in this regard it is very much necessary and essential to bring

them on record for which further cross examination of PW.1 is very much necessary and essential, accordingly applications are filed. If they are allowed and recall the PW.1 for the purpose of further cross examination, no harm will be caused to the opponent. These facts have been denied by the opponent/petitioner in the objection statement contended that applications are devoid of merit only with an intention to protract the proceedings. The PW.1 has already been cross examined in length, so there is no reason for recalling him for the purpose of further cross examination. The grounds shown for recall of the witness are irrelevant and created for the purpose of filing the application itself. Hence prayed for dismissal of the application. It is the specific case of the applicant that after conclusion of evidence of both sides the petitioner herein has caused to file CrI.Mis.Case against the respondent No.1 in respect of the subject matter involved in this case, so some important facts required to be brought on record. So also it is essential to pose certain questions on subsequent facts arose after the conclusion of the evidence. If such would be the fact the applications deserves to be considered, argument seems to be reasonable. Moreover if the new facts arise after the cross examination of PW.1 then the respondent is having right of cross examination of those facts. If the new thing allowed to come on record it may help the court for effective and

conclusive adjudication of the case on hand, arguments holds good. The petitioner is not denying the fact of new things arose after conclusion of the evidence and filing of the Crl.Mis.case against the applicant herein. Such would be the fact it is just and reasonable to give one more opportunity for further cross examination of PW.1 by recalling the witness on reasonable cost, it will meet the ends of justice, no reason to deny the same. In my view the applicant has proved point No.1. Accordingly, I have answered it in the **Affirmative**.

8. Point No.2: - For the various reasons discussed in point No.1 and findings given on it by me, I proceed to pass the following;

ORDER

IA No.12 & 13 filed by the respondent No.1 U/sec.151 of CPC and U/O 18 Rule 17 R/w Sec.151 of CPC are hereby allowed on cost of Rs.500/- each.

Accordingly PW.1 is recalled for further cross examination.

R/by 08.07.2025.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in open Court on this the **18th day of June, 2025**).

(MALLIKARJUN.B.NAGARALE)
LXXXVIII Addl.City Civil & Sessions Judge,
Bengaluru.