



**IN THE COURT OF THE LXXXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT):
BENGALURU CITY. (CCH-89)**

Dated this the 27th day of June 2026

Present:

**Sri Vijaya Kumar Rai, B.Com., LL.B.,
LXXXVIII Addl.City Civil & Sessions Judge,
Bengaluru**

Com.Misc.No.46/2024

APPELLANT

M/s.Ninja Fitness,
A Partnership Firm
Represented by its Partners,
a) M.Abhishek.S.Jain,
b) Umpathy Venugopala,
c) Darshan.S.J,
Office at No.02, 4th Floor,
Hombegowdanagar,
Near Brand Factory, Wilson Garden,
Bengaluru-560 027.

(By M/s.Tavane Advocates)

VS.

RESPONDENTS

1. Marvin Lifestyle India Pvt., Ltd.,
No.148, Subbaiah Circle,
Lalbagh Road, Bengaluru-560 027,
Represented by its
Managing Directors,
(1) Mr.Santhosh Francis Moras and
(2) Mrs.Flavia Moras
Both are residing at No.B-104,
BVL Realty INC, Mission Road,
Sampangi Ramanagar,
Bengaluru-560 027.
(Sri.C.Nagaraj, Advocate)

2. M/s.Sriven Properties,
A Registered Partnership Firm,
Represented by its
Managing Partner,
Mr.T.J.Raghavendra Murthy,
Office at No.02, Sriven Properties,
5th Floor, Hombegowdanagar,
Near Brand Factory,
Wilson Garden,
Bengaluru-560 027.
(By Sri.Gurupadaswamy.N.S,
Advocate)

IA No.11 & 12**APPLICANT/
PETITIONER**

: M/s.Ninja Fitness and Another

VS

**OPPONENTS/
RESPONDENTS**

: Marvin Lifestyle India Pvt., Ltd.

Provision under which the applications are filed -	IA No.11-U/sec.151 of CPC IA No.12-XVIII Rule 17 R/w section 151 of CPC
Relief sought for -	To reopen the case and to recall RW 1 for the purpose of further cross-examination.
The date on which the applications are filed -	23.06.2026
Number of the applications -	I.A.No.11 & 12
The date on which the objection is filed by different opponent -	25.06.2026

The date on which the orders passed on the said applications -	27.06.2026
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ORDERS ON IA NO.11 & 12

IA No. 11 is filed by the petitioner under Section 151 CPC to reopen the case and IA No. 12 is filed under Order XVIII Rule 17 CPC to recall RW1 for the purpose of further cross-examination.

2. In the application and affidavit, it is stated that certain material and relevant aspects relating to ownership, continuance of tenancy, attornment of tenancy, communication of transfer, security deposit, obligations, entitlement of demand for rent, and circumstances under which an ex parte decree came to be obtained are required to be clarified in the cross-examination and hence recall of RW1 is necessary. Learned counsel appearing for the respondent filed objections to IA No. 11 and 12 and also filed notes of arguments.

3. Heard the arguments.

4. The point for determination is:

1) Whether the petitioner has made out grounds to recall RW1?

The answer is in the negative.

REASONS

5. The main petition is filed by the petitioner under Order IX Rule 13 CPC to set aside the judgment and decree passed in OS No. 795/2023 dated 18.12.2023 on the ground that no summons was served and even if a summons was stated to be served, the signature contained therein is not the signature of the petitioner and the respondent has manipulated the documents. Later, on behalf of the petitioner, its partner Abhishek S. Jain was examined as PW.1, and the process server who has stated to have served the summons is also examined as PW2. On behalf of the respondent, its Managing Director by name Flavia Morris is examined as RW1. The petitioner has cross-examined RW1 and the cross-examination of RW1 was completed on 23-10-2024 itself.

6. Now, after more than 1 year and 8 months, the present applications are filed by the petitioner, wherein the petitioner seeks to cross-examine RW1 further in respect of ownership, security deposit, attornment of tenancy, and entitlement of rent. The materials on which the petitioner would like to cross-examine RW1 are set out in para No. 5 of IA No. 12 as follows:-

“5. The present proceedings involve substantial questions relating to:

- a) ownership and transfer of the schedule premises;
- b) existence and continuance of tenancy in favour of the petitioner;
- c) attornment of tenancy after transfer of ownership;
- d) communication of transfer to the petitioner;
- e) security deposit of Rs.25,00,000/- paid by the petitioner;
- f) obligations of the transferor and transferee landlord;
- g) entitlement to demand rent after the alleged transfer;
- h) circumstances under which the ex parte decree came to be obtained.

6. The petitioner submits that certain material questions concerning the above aspects require clarification from PW1 and the answers thereto are necessary for effective adjudication of the controversy involved in the proceedings.”

7. It is necessary to note that in a petition under Order IX Rule 13 CPC, the scope of the court is very much limited. In such a petition, the petitioner is required to satisfy the court that summons was not duly served or that he was prevented by sufficient cause from appearing when the suit was called on for hearing. Other aspects cannot be dealt with in a petition under Order IX Rule 13. All the subjects on which the petitioner now would like to cross-examine RW1, as referred to above, are outside the scope of Order IX Rule 13 CPC. So,

all these aspects listed above cannot be the subject matter of this petition and are totally irrelevant for the disposal of the main petition. The petitioner has not stated any other aspect relating to the service of summons to be further clarified by recalling RW1. Therefore, the very application filed by the petitioner is totally misconceived, and none of the aspects sought to be clarified from RW1 can be adjudicated upon, discussed, or on which the court can record any finding.

8. Having regard to these aspects, no grounds are made out by the present petitioner to recall RW1 by reopening the case. Accordingly, the above point is answered in the negative, and the following order is passed:

ORDERS

IA No. 11 and 12 filed by the petitioner under Section 151 CPC and under Order XVIII Rule 17 CPC are rejected.

(Dictated to the Adalat AI, carried out corrections by the Stenographer, print out taken and then pronounced in the Open Court on this the **27th day of June, 2026**)

(Vijaya Kumar Rai)
LXXXVIII Addl.City Civil &
Sessions Judge, Bengaluru.

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