

ORDER NO.49 dt.13/05/2026

Today is fixed for hearing of the petition dt.22/09/2025 filed by the defendant.

Both parties filed their respective hajiras.

Plaintiff files W.O. Copy served.

The petition is now taken up for hearing.

Ld. Counsel appearing on behalf of the defendant submitted that he is intending to adduce evidence of DW-1 on recall to corroborate some versions of W/S which inadvertently has not been stated in affidavit in chief previously. Ld. Counsel further submitted that he will not adduce further evidence.

Countering the aforesaid submission of his adversary Ld. Counsel appearing on behalf of the plaintiff submitted that when there is specific provision of recall in CPC then how section 151 can be implemented to recall a witness and accordingly the instant petition is liable to be rejected. Ld. Counsel further submitted that recall petition cannot be allowed to fulfill the lacuna which has arisen in the cross examination. In this regard Ld. Counsel has referred to me the judgment of Hon'ble Apex Court in **Vadiraj Naggappa Vernekar (D) Th. Lrs VS Sharad Chand Prabhakar Gogate.**

I have heard Ld. Counsel for both side at length.

Perused the petition as well material on record.

It appears that the evidence of DW-1 has already been concluded. It appears that the contention which the defendant is intending to introduce by way of recall of DW-1 is already within the content of W/S filed by defendant. It is fact that the aforesaid has not been mentioned in the affidavit in chief of DW-1. As such I am of view that it does not tantamount to filling up of lacuna as no new fact will be introduced if the recall petition is allowed and the plaintiff will not be prejudiced in any way.

Accordingly at this stage I find no impediment to allow the petition filed by the defendant which is hereby considered and allowed on contest but without any order as to costs.

Fixing 29/06/2026 for evidence of DW-1 on recall positively.

D/C by me

Judge, Bench-4,
Presidency Small Cause Court

Judge, Bench-4,
J.O. Code no. WB01232

EJ 358 OF 2011 (5971 OF 2014)
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