

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.191 of 2015

Date of decision: January 12, 2015.

Seema Dahiya

... **Petitioner**

v.

Col. Dharam Pal etc.

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Present: Shri Vaneet Soni, Advocate, for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral):

Aggrieved of order dated 3.5.2014 of the lower court, counsel for defendant No.1, petitioner herein, has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India by way of this revision petition.

Vide the impugned order, application of the petitioner-defendant under Order XVIII Rule 17 CPC for recalling of the plaintiff for further examination was dismissed by the lower court.

Counsel for the petitioner has argued that after framing of additional issues on 28.11.2013, the petitioner-defendant has a right to recall the plaintiff as also his witnesses and he also should have been provided opportunity to further cross examine them.

Perusal of the impugned order reveals that following three additional issues were framed on 28.11.2013:-

"1. Whether the suit property in question is her (defendant no.1) matrimonial home? OPD

2. Whether the defendant no.1 is residing with her daughter defendant no.3 since 2005-06 regularly to till date in her matrimonial home? OPD

3. Whether the suit is collusion suit with defendant no.2? OPD”

Onus of proof of all these issues is on the defendants. Evidence is to be led by the defendants to prove these issues.

When called upon to satisfy this Court as to how framing of additional issues, onus of proof of which is on the defendants, gives any right to the petitioner-defendant to recall the plaintiff for further cross examination, no answer much less satisfactory has come forth.

Rather, it transpires that not only the application for recalling of the plaintiff is a misuse of the process of the court but even conduct of the defendants in prosecuting their cause in the suit filed by the plaintiff long back, is merely is of procrastination and delay. It is revealed that even after framing of additional issues on 28.11.2013, the defendants sought four adjournments but did not lead any evidence. When the last opportunity was granted to them to conclude their evidence, the defendants, instead of leading their evidence and concluding the same, made the application for recalling of the plaintiff and his witnesses.

The impugned order is not only well written but also discusses all the attending facts and circumstances clearly and transparently.

No merit.

Dismissed.

January 12, 2015.
kadyan

[Dr. Bharat Bhushan Parsoon]
Judge