

CR-2584-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-2584-2015 (O&M).
Decided on: April 20, 2015.**

Vijay Kumar Joshi

..... Petitioner(s)

Versus

Mohinder Singh and another

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Sanjeev Gupta, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL).

This is a tenants revision petition against the order dated 7.1.2015 by virtue of which application for recalling of PW.1 Parminder Singh for further cross-examination has been dismissed by Rent Controller.

On asking of the Court, counsel for the petitioner has clarified that respondent Nos.1 & 2 are father and son. In 2010, the property in dispute was transferred in the name of respondents to the extent of half share.

The rent petition is at the stage of rebuttal evidence. Respondent No.2 is claiming ejectment on the ground of personal necessity and the respondents have already examined Parminder Singh as PW.1.

CR-2584-2015 (O&M)

Counsel for the petitioner has contended that it was not in the knowledge of the tenant-petitioner that on 14.8.2010, the landlord-respondent No.2 had shifted to Australia. It has come to the knowledge of the petitioner subsequently that respondent No.2 had shifted abroad on permanent basis and is not residing in India and has got sufficient income, as such he is not entitled to get the shop vacated on the ground of personal necessity as he does not want to shift to India.

I have heard the learned counsel for the petitioner. He has referred to judgment in case **K.K.Velusamy Vs.N.Palaniasamy, AIR 2011 SC (Civil) 1000**, wherein Hon'ble the Apex Court in context to the provisions of order 18 Rule 17 and Section 151 CPC has observed that Court has got authority to recall any witness for further examination-in-chief or cross-examination of the witness despite the deletion of order 18 Rule 17 A CPC. There is no dispute regarding the proposition that the Court has always got an authority to permit either fresh evidence or recalling for further examination-in-chief or cross-examination of a particular witness as Order 18 Rule 17 CPC is primarily a provision enabling the Court to clarify any issue or doubt by recalling any witness or at the request of any party. A word of caution has been given in the above said judgment that if the application for additional evidence or resummoning a witness is found to be mischievous, frivolous or to cover up negligence or lacunae, it should be rejected with heavy

CR-2584-2015 (O&M)

costs. It has also been observed in the said judgment that if additional evidence is not found to be genuine or not relevant, exemplary costs can be awarded besides ordering prosecution.

With the assistance of learned counsel for the petitioner, I have gone through the cross-examination of Parminder Singh PW.1. The first question which was put to Parminder Singh in cross-examination is as follows:-

“I have not mentioned in my affidavit EX.PW2/A that I am residing in Australia.”

A perusal of the above said suggestion in the cross examination clearly indicates that the factum of respondent No.2 Parminder Singh residing in Australia was in the knowledge of the petitioner. Once it was in his knowledge that respondent was residing in Australia, it was also open to the counsel for the petitioner to cross-examine the witness regarding status of his residence in Australia. It should have easily been suggested that respondent No.2 had shifted to Australia on permanent basis and that he was not inclined to return. It appears that specific question in that aspect was not put to the witness. The provisions of Order 18 Rule 17 CPC read with Section 151 CPC cannot be permitted to cover up any negligence or lacunae. Besides this, it was always open to the petitioner-tenant to produce evidence in rebuttal that respondent No.2 has permanently shifted to Australia.

CR-2584-2015 (O&M)

After considering the above said circumstances, I am of the opinion that the application for recalling respondent No.2 for cross-examination has rightly been dismissed. The respondent No.2 cannot be resummoned for further cross-examination to cover up any lacunae.

In view of said circumstances, no ground is made for interference in the impugned order.

The petition is dismissed.

April 20, 2015.
rka

(M.M.S. BEDI)
JUDGE