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

CR No.2850 of 2015

Date of decision: April 28, 2015

Satnam Singh

.....Petitioner

Versus

Phoola Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Vivek Salathia, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 16.10.2014, whereby application moved by the petitioner for permission to re-examine PW1-Mukhtiar Singh, was dismissed.

Learned counsel for the petitioner has submitted that PW1, in his examination-in-chief had supported the case of the petitioner. However, when PW1 was cross-examined by the counsel for the defendants, he turned hostile. In these circumstances, it was very necessary for the petitioner to re-examine PW1. Learned counsel has further submitted that the application for re-examination of the witness, was moved on the same day and petitioner could not have sought re-examination of the witness without moving the said application. In support of his arguments, learned counsel has placed reliance on ***Vadiraj Naggappa Vernekar (D)***

through LRs versus Sharad Chand Prabhakar Gogate,

2009 (2) RCR (Civil) 508, wherein it was held as under:-

“17. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case. Some of the principles akin to Order 47 Civil Procedure Code may be applied when a party makes an application under the provisions of Order 18 Rule 17 Civil Procedure Code, but it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

Section 137 and 138 of the Indian Evidence Act, 1872 ('Act' for short) reads as under:-

“137. Examination-in-chief.--The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.--The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.--*The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.*

138. Order of examinations.--*Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, the n(if the party calling him so desires) re-examined.*

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.--*The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."*

In the present case, petitioner has filed suit for declaration. Petitioner examined PW1-Mukhtiar Singh attesting witness of the will dated 10.05.1993. In his cross-examination, PW1 turned hostile and denied the fact that he had attested the will executed by Pritam Singh. Thereafter, petitioner moved the application for recalling PW1. The learned trial Court rightly dismissed the application moved by the petitioner, as witness after his cross-examination, was discharged and at that stage, petitioner should have sought an opportunity to enable him to re-examine the witness as per Section 138 of the Act.

I have gone through the judgment relied upon by

the learned counsel for the petitioner. In the facts and circumstances of the present case, the same fails to advance the case of the petitioner.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

April 28, 2015
m.singh