

CR-5104-2015

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

CR-5104-2015

Date of decision: 12.8.2015

Neelam Grover @ Naresh Kumari

...Petitioner

Versus

Jitender Grover

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Kanwal Goyal, Advocate for the petitioner

SNEH PRASHAR, J.

The present revision petition under Article 227 of the Constitution of India is directed against the order dated 14.7.2015 passed by learned District Judge (Family Court), Gurgaon vide which the application for recalling the respondent (PW-4) for further cross-examination was dismissed.

The submissions made by Mr.Kanwal Goyal, Advocate have been heard.

Learned counsel for the petitioner submitted that learned District Judge (Family Court) committed an error by dismissing the application of the petitioner for recalling the respondent for further cross-examination. He referred to Order XVIII Rule 17 of the Code of Civil Procedure and pointed out that under the said provision the Court

has vast power to recall at any stage of suit, a witness, who had been examined earlier and put to him such questions as it deem fit.

Learned counsel asserted that due to negligence on part of counsel for the petitioner, some material questions regarding the alleged basic incident that occurred on the first night of marriage of the parties could not be put to the respondent-husband. If the queries are not clarified a serious prejudice will be caused to the petitioner. On account of the fault of the counsel, the litigant should not be left to suffer. To support his argument, learned counsel relied upon **M/s National Agro-Chemical Industries Ltd. vs. National Research Development Corporation 2006(2) RCR (Civil) 98.**

5. Undoubtedly, Order XVIII Rule 17 CPC confers wide discretionary power upon the court to summon/ recall/ re-examine any witness but needless to say that such a discretion has to be exercised judiciously.

6. In the present case, the divorce petition under Section 13 of the Hindu Marriage Act for grant of decree of divorce was filed by respondent-husband.

The learned trial Court while dismissing the application to recall the respondent-husband for further cross-examination has observed as under:-

“It is observed from the records that the submissions made by the applicant (present petition) were all within her knowledge from the very beginning and yet no query had been put to PW4 in this regard while

cross- examining him. No fresh fact has come to her knowledge after the closure of the cross-examination of PW4. The applicant cannot be permitted to plug the loop holes in her case by resorting to such type of applications which are devoid of any merit. Therefore, the application is dismissed.”

It was in presence of the petitioner-wife that the cross-examination of the respondent-husband was recorded and her evidence was closed. The questions which the petitioner proposes to put to the respondent-husband were very much in the knowledge of the petitioner from the very beginning. She exercised complete right to cross-examine the respondent and no new fact had come to her knowledge after close of the cross-examination. The case is fixed for evidence of respondent-wife (petitioner). It appears that the application for recalling the respondent-husband for further cross-examination was filed only to delay the proceedings and to fill in the lacunas in her case. At this stage, if the said application is allowed there will be never an end to the litigation between the parties. Every time a party will realise some loop holes in cross examination of the witness, it will ask for his/ her recalling.

The facts of **M/s National Agro- Chemical Industries Ltd.'s** case (supra) are distinguishable as in that case the cross-examination of the witness had not been concluded. But in the present case, the cross-examination of the respondent-husband had been closed after availing complete opportunity and no genuine reason could be

shown for recalling the witness.

Thus, finding no ground for intervention in the impugned order of the learned trial Court, the present petition being devoid of any merit is dismissed in limine.

12.8.2015
gsv

(SNEH PRASHAR)
JUDGE