

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

**263**

Civil Revision No. 7389 of 2015

Date of Decision: December 17, 2015

Sajjan Kumar

-Petitioner

Vs.

State of Haryana and Ors.

-Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. S. K. Verma, Advocate  
for the petitioner.

Mr. Siddharth Sanwaria, DAG, Haryana.

**RAJ MOHAN SINGH, J. (ORAL)**

{1}. Petitioner has assailed order dated 29.09.2015 vide which application under Order 18 Rule 17 CPC moved by defendant No.4 has been accepted. The said application has been moved with the assistance of Section 165 of Indian Evidence Act for recalling of order dated 24.03.2015 vide which evidence of the defendant was closed. In the application, order dated 24.03.2015 is sought to be recalled on the ground that Sh. Satyawar, SDO never informed any superior officer about filing of such affidavit and, therefore, defendants No.1 to 4 were kept in dark about the affidavit. The submissions made by Sh.

Satyawan, SDO were stated to be contrary to the stand taken in the written statement. Sh. Satyawan, SDO was also sought to be charge-sheeted departmentally. Ultimately, prayer was made that opportunity be granted to defendant No.4 to lead evidence properly and to file fresh affidavit withdrawing earlier affidavit filed by Sh. Satyawan, SDO. The said application has been allowed by the Civil Judge (Jr. Divn.), Bhiwani vide order dated 29.09.2015 subject to payment of cost of Rs.2000/- to be deposited in District Legal Services Authority, Bhiwani. One opportunity was granted to the defendants to examine their witness in support of their pleadings.

{2}. Learned counsel for the petitioner submits that the scope of Order 18 Rule 17 CPC is enabling provision for convenience of the Court. If the Court requires any evidence for effective adjudication of the case, the same can be called upon at any stage of litigation. In the instant case, the Court has already put questions to the witness and the witness has appeared on the direction of the Court to clarify the contents of the affidavit so filed by him. Learned counsel for the petitioner relies upon **Surender Kumar vs. Karambir Singh, AIR 2004 (P&H)** to contend that the parties are not entitled to re-examine the witness nor fill lacuna. It is for the Court to record satisfaction that witness so sought to be examined is required

for proper adjudication of the case. Learned counsel further states that affidavit filed by the witness was duly vetted by the government pleader. Witness was duly cross-examined in the presence of the government pleader. Witness has appeared on the direction of the Court to clarify the contents of the affidavit and he was having knowledge from the very inception as he appeared on the summoning of the Court. Witness was a Sub Divisional Officer holding responsible post of the department and he appeared along with record and proved the same before the Court.

{3}. On the other hand, learned counsel for the State contends that if the application is not allowed and the affidavit filed by Sh. Satyawar, SDO is taken into account, then gross injustice would be done to the State as the affidavit contains wrong averment and he was not authorized by the defendants to depose before the Court.

{4}. Having considered the controversy, I am of the view that there is no such satisfaction recorded by the Court in the context of affidavit not being inadequate to consider the stand taken by the State in the written statement as well as in the evidence.

{5}. The affidavit was duly vetted by the government pleader and the witness was cross-examined in the presence of

the government pleader. Moreover, the contents of the affidavit were clarified on the direction of the Court itself. There was no such objection taken at that stage. The powers under Order 18 Rule 17 CPC read with Section 165 of the Indian Evidence Act are purely related to the discretion of the Court where Court requires the evidence to be adduced or document to be summoned from the proper source. In the instant case, the said production cannot be relied because there is no satisfaction recorded by the Court that the evidence so sought to be produced is necessary for just decision of the case. On the other hand, the conduct of the witness has been highlighted with reference to his deposition and vetting of affidavit by the government pleader and his cross-examination thereafter.

{6}. In view of aforesaid, this revision petition is allowed and the impugned order is set aside.

**December 17, 2015**  
*jyoti Y.*

**(RAJ MOHAN SINGH)**  
**JUDGE**