

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

CR-8243-2015 (O&M)

Date of decision: 5.12.2015

Malhotra Land Developers and Colonisers Private Ltd.

...Petitioner

Versus

S.Baldev Singh

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Dhaman Dhir, 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 1.10.2015 passed by learned Civil Judge, Junior Division, Ludhiana vide which the application under Order XVIII Rule 17 of the Code of Civil Procedure for recalling the witness for further cross-examination was dismissed.

The petitioner/plaintiff filed a civil suit for possession by way of specific performance of the agreement of sale dated 22.2.2008 and for directing the defendant/ respondent to execute and register the sale deed in his (petitioner's) favour on receipt of the balance sale consideration amount.

The submissions made by learned counsel for the petitioner have been heard.

Learned counsel for the petitioner submitted that learned

trial 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 inadvertent omission on part of counsel for the petitioner, the respondent/ defendant could not be cross examined with regard to his averment that the earnest money so paid by the plaintiff/ petitioner had been returned to him. If the query is not clarified a serious prejudice will be caused to the petitioner. The omission was on part of the counsel, who cross-examined and for the same, the petitioner should not be left to suffer. To support his contention, he relied upon **Phuman Singh and another vs. Hazara Singh and others 2009(3) RCR (Civil) 671, CR-5022-2015 decided on 18.8.2015 and CR-8057-2015 decided on 1.12.2015 by this Court.**

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. It has already been held by this Court in **Binder Singh vs. Babu Ram, 2007(3) R.C.R. (Civil) 495** that if any point has not been put to the witness in the cross-examination, then it cannot be made the basis for recalling the witness for further cross- examination.

The petitioner availed adequate opportunity to cross-

examine the respondent. The queries which the petitioner now proposes to put to the respondent were in his knowledge from the very beginning. He exercised complete right to cross-examine the respondent and it is not the case that any new fact has come to his knowledge after close of the cross-examination. The case is fixed for rebuttal evidence, if any, and for arguments. It appears that the application for recalling the respondent for further cross-examination was filed only to delay the proceedings and to fill in the lacunas in the case. There can be no end to the litigation if such kind of applications are allowed in the set of facts in hand, as every time a party will realise some loop hole in cross examination of the witness, it will ask for his/ her recalling.

The facts of the cases cited by learned counsel for the petitioner are distinguishable from the case in hand. In the present case, the cross-examination of the respondent had been closed after the petitioner had availed 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.

5.12.2015
gsv

(SNEH PRASHAR)
JUDGE