

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1673 of 2016

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Vikash Upadhyay

.... Petitioner/s

Versus

Asmita

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-07-2016 Heard the learned counsel, Mr. Rajeev Roy for the
petitioner.

Perused the order dated 23.11.2015 passed by the learned
Additional Principal Judge, Family Court, Patna in Matrimonial
Case No.351 of 2013 whereby the Court below refused to recall
P.W.1 for further cross-examination.

It appears that the wife-respondent has filed divorce case
against the husband-petitioner being Matrimonial Case No.351 of
2013. The witnesses were examined by the wife-respondent and
were cross-examined. Thereafter, the application was filed under
Order 18 Rule 17 C.P.C. for recall of P.W.1 for further cross-
examination on the ground that no proper answer was given by
P.W.4 regarding the expenditure of wedding and no answer was
given as to whether in the return of income tax, the expenditure of
Rs.22 lacs has been shown or not.

The Hon'ble Supreme Court in **AIR 2009 Supreme Court 1604(Vadiraj Naggappa Vernekar (deceased by L. Rs.) v. Sharad Chand Prabhakar Gogate)** has held that “the power under the provisions of O. 18 R. 17 is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. 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.”

In view of the above settled proposition of law, I do not find any reason to interfere with the impugned order. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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