

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1242 of 2016**

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Rabinder Rai

.... .... Appellant/s

Versus

Bijya Prasad Yadav

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Rakesh Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR  
SAHOO  
ORAL ORDER**

2 28-11-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 16.09.2016 passed by learned Civil Judge(Sr. Div.) 3<sup>rd</sup>, Patna(wrongly mentioned as Senior Civil Judge 3<sup>rd</sup>, Patna) whereby the learned Court below rejected the application filed by the defendant-petitioner to recall P.W.1 for further cross-examination.

From perusal of the impugned order, it appears that the defendant-petitioner has already cross-examined the said P.W.1 and he has been discharged. Now, prayer has been made for further cross-examination on the ground of deposit of Rs.3 lacs in complaint case.

It may be mentioned here that the suit has been filed by the plaintiff-respondent for specific performance of contract. The question therefore, is whether there was agreement between the parties or not and whether the plaintiff was ready and willing to

perform his part of the contract or not and whether he will be entitled for the relief of specific performance of the agreement or not.

The Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar (deceased by L. Rs.) v. Sharad Chand Prabhakar Gogate, AIR 2009 Supreme Court 1604** "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 the present case, there is no question of any ambiguity arises. After the deposit of amount, the defendant has cross-examined the plaintiff who was examined as P.W.1. Now therefore, he is trying to fill up the lacunae by recalling P.W.1 for further cross-examination. It will not be out of place to mention here that the defendant's evidence is going on, therefore, he is at liberty to prove his case pleaded by him and for that the plaintiff's witness who has already been discharged should not be recalled and the court below has rightly not recalled the same.

I, therefore, find no reason to interfere with the  
impugned order in exercise of supervisory jurisdiction. Thus, this  
Civil Miscellaneous application is dismissed.

**(Mungeshwar Sahoo, J)**

Saurabh/-

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