

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 405 of 2014

- Krishnapal Singh Bhadoria S/o Late Brijbhushan Singh Bhadoria, Aged About 39 Years, R/o 41, 42/17, Rajput Boarding Gali, Jhansi Road, Bhind, Post Office & Tah Bhind, Ps Bhind, Distt Bhind, Mp

---- Petitioner

Versus

- Smt. Manu Bhadoria W/o K.P.Singh Bhadoria, Aged About 35 Years R/o Jain Digree College Gali, Water Works, Post Office & Ps Bhind, Tah & Distt Bhind (Mp), Present Address Through Kamal Narayan Singh, Transport Nagar, Korba, Ps & Distt Korba, Cg

---- Respondent

For Petitioner
For Respondent

Shri Prateek Sharma, Advocate
Shri M. K. Baeg, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

05/07/2016

1. In a matrimonial suit filed by the petitioner seeking divorce under Section 13 of the Hindu Marriage Act, 1955, the Supreme Court has transferred the proceedings from Bhind (M.P.) to Bilaspur (C.G.). When the trial was progressing at Bhind Court, 3 witnesses were examined by the petitioner namely, PW-1, Krishnapal Singh Bhadoria (plaintiff himself), PW-2, Ashok Soni and PW-3, Devendra Singh Bhadoria. After transfer of the matter, the respondent moved an application under Order 18 Rule 17 CPC for recall of the witnesses for their re-examination. This application was moved on the ground that for lack of legal assistance, the witnesses could not be cross-examined properly, therefore, all the witnesses examined by the plaintiff be recalled and the respondent be allowed to again cross-examine them.

2. The trial Court has partly allowed the application by directing that the petitioner shall remain present for his re-cross examination by the respondent. While passing the order the trial Court observed that although it is not mentioned in the application as to on what particular aspect the re-examination is necessary, yet since the examination-in-chief runs into 20 paragraphs but the cross-examination is only in 7 paragraphs, the re-cross examination deserves to be ordered.
3. In the considered opinion of this Court, the powers under Order 18 Rule 17 CPC cannot be exercised on whim and fancy and on mere *ipse dixit*. There is no principle of universal application that if the examination-in-chief runs into 50 paragraphs, the cross-examination has to be in 50 paragraphs, only then it will be treated that the witness has been properly cross-examined. The length of cross-examination depends on the quality of examination-in-chief and the factual matrix of the case, therefore, if the lawyer has already cross-examined a witness and closed the examination of the said witness, power under Order 18 Rule 17 CPC has not to be exercised in a routine manner for the purpose of allowing opposite party to fill up the lacuna.
4. In the considered opinion of this Court, the trial Court has committed material irregularity in exercising jurisdiction under Order 18 Rule 17 CPC, therefore, it is *ex facie* illegal and contrary to the underlying principle under Order 18 Rule 17 CPC.
5. For the foregoing, the impugned order deserves to be and is hereby set aside. Accordingly, the writ petition is allowed. No order as to costs.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA