

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1186 OF 2016

Shri Prashant Narayan Kakade.	]	... Petitioner
Versus		
Smt. Gauri Prashant Kakade.	]	Respondent

Mr. Shrishail Sakhare for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- JANUARY 27, 2016

P. C. :-

1. **Not on board. Upon production, taken on board.**

2. The challenge in this petition is to the order dated 03/12/2015 by which the petitioner's application at Exh.205 seeking recall of PW 1 and PW 2 for the purposes of cross-examination has been declined.

3. The learned Counsel for petitioner contended that production of certain emails has been permitted by the Family Court. He submits that this evidence travels beyond the pleading of the respondent and therefore, ought not to be looked into. Thereafter, the learned Counsel for petitioner states that it is for this purpose that the recall of PW 1 and PW 2 is necessary.

4. Having heard the learned Counsel for petitioner and perused the record, there is no reason to fault with the impugned

order. Assuming that some evidence, which travels beyond the pleadings of the party is admitted, the defect, cannot be cured by seeking recall of PW 1 and PW 2. The Court, in a given case, has the power to recall witness provided, the Court is satisfied that there are certain ambiguities and the Court itself requires clarification in the matter. The provisions in this regard are not meant to assist the parties to fill in the lacunae in their case. The reason set out by the petitioner, is not at all any reason in the eyes of law permitting recall of witnesses. If at all, the complaint of the petitioner to the effect that some evidence travels beyond the pleadings is true, then, the petitioner may be entitled to take other steps in this regard. However, there is no case made out to recall the witnesses.

5. In fact, the aforesaid proposition is supported by the authority of the Hon'ble Supreme Court in the case of **K. K. Velusamy Vs. N. Palanisamy**¹, wherein the Hon'ble Apex Court, in para 8, has observed thus:-

“8. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the

¹ Civil Appeal Nos.2795-2796 of 2011

evidence of a witness who has already been examined. [Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate - 2009 (4) SCC 410]. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in- chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

6. The learned Counsel for petitioner also relied upon decision in the case of **R. Jayakanthan Vs. Tmt. B. Sritha**². The same obviously turns on its own facts. However, even in the said decision, it has been clearly held that the power under Order 18 Rule 17 is purely discretionary and has to be exercised with greatest care and only in the most peculiar circumstances. In fact, the Hon'ble Madras High Court distinguished its earlier decision of **S. S. S. Durai Pandian v. S. S. Samuthira Pandian**³, where, again, in the peculiar facts and circumstances, the decision to recall a witness was upheld.

7. There is no jurisdictional error in the making of the impugned order. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

² C.R.P PD Nos.1558 and 1559 of 2011 and M. P No.1 of 2011 in C.R.P(PD) NO.1558 of 2011

³ 1998-I-L.W. 778