

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

CR No.2167 of 2016

Date of decision: 22.03.2016

Surinder Kaur

....Petitioner

Versus

Sukhwinder Kaur

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.R. Punia, Advocate
for the petitioner.

REKHA MITTAL J.

The present petition lays challenge to order dated 26.02.2016 (Annexure P-2) passed by the Additional Civil Judge (Senior Division), Phillaur, whereby one opportunity has been allowed to the respondent/defendant to further cross-examine Surinder Kaur (plaintiff) PW-1, Balwinder Singh PW-2 and Satya Dev PW-3.

Counsel for the petitioner would contend that a similar application was filed by the respondents earlier that was dismissed by the trial Court vide order dated 29.04.2015. The challenge to order dated 29.04.2015 by way of CR No.8566 of 2015 captioned "*Sukhwinder Kaur vs Surinder Kaur*", was rejected by this Court on 11.01.2016 vide order Annexure P-1. The respondent filed an application for amendment of the written statement, allowed by the trial Court on 24.08.2015. The present application for re-calling PW-1 to PW-3 for their further cross-examination in order to confront them with the averments raised by way of amendment in the written statement was filed on 21.01.2016 i.e. approximately five months after

application for amendment of written statement was allowed. It is further argued that the petitioner has already submitted his written submissions before the trial Court, therefore, the order allowing application for re-calling of witnesses of the petitioner cannot be allowed to sustain. In support of his contention, he has relied upon judgment of the Hon'ble Apex Court ***“M/s. Bagai Construction through its proprietor Mr. Lalit Bagai vs M/s. Gupta Building Material Store”***, 2013(3) RCR (Civil) 304.

I have heard counsel for the petitioner and perused the records.

The earlier application for recalling witnesses of the plaintiff was filed prior to application of the respondent for amendment of the written statement was allowed by the trial Court. Any observations made by the trial Court in order dated 29.04.2015 rejecting claim of the respondent for re-calling the witnesses for further cross-examination and affirmed by this Court would not be relevant in the changed circumstances. Admittedly, the respondent has been allowed to amend the written statement to raise the plea that mortgage deed dated 20.09.2010, basis of the suit is the result of fraud and misrepresentation etc. As the respondent has been allowed amendment of the written statement that goes to the root of the case, the respondent would be well within her right to re-call the witnesses of the petitioner in order to cross-examine them *qua* plea of fraud and misrepresentation because in absence of the witnesses being confronted with the allegations raised in the written statement, it may cause serious prejudice to the respondent at the time of final disposal

of the suit. In this view of the matter, I do not find any error much less illegality in the impugned order. However, the trial Court shall ensure that further cross-examination of the witnesses is limited to the facts pleaded by way of amendment.

To be fair to the petitioner, the judgment in *M/s. Bagai Construction's case (supra)* has got no bearing on the present case for the reason that arguments in the case have not been heard and the matter has not been reserved for judgment as was the situation in the referred authority wherein in para 11 it has been held that “at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him.”

In view of what has been discussed hereinabove, finding no merit, the petition stands disposed of.

(REKHA MITTAL)
JUDGE

22.03.2016
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