

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

CR-2991-2015

Date of Decision:-01.04.2016

ASHOK KUMAR

....Petitioner(s)

VS.

PARAMJIT SINGH AND ORS

....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE AJAY TEWARI

Present:- Mr. N.K. Vadehra, Advocate,
for the petitioner.

Mr. Vipin Mahajan, Advocate,
for the respondents.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

AJAY TEWARI, J. (Oral)

This petition has been filed against the order dated 7.4.2015 whereby the application filed by the petitioner under Order 18 Rule 17 CPC for recalling AW-2 to clarify a typographical mistake in evidence was dismissed.

Learned counsel for the petitioner has argued that the petitioner had filed two petitions for eviction of tenants which are pending before the same Court and are being heard together. One witness had to appear in both the cases and to give the similar testimony and in fact an affidavit in examination-in-chief in both the cases contained similar averments. While being cross-examined, similar suggestions were put to him. In one case, he correctly rejected the suggestions and it was so recorded but in the present case, as per learned counsel for the petitioner, there was a typographical

error in recording his rejection of the suggestions and consequently wherever he had stated 'it is incorrect' it was recorded as 'it is correct'. He has, therefore, prayed that this application be allowed.

Learned counsel for the respondents has relied upon a Single Bench judgment of Rajasthan High Court in the case of **Ashok Kumar Agarwal vs. Pramod Kumar Jain**, 2011(4) RLW 3634, where, as per him in the similar circumstances a similar plea was rejected. As per learned counsel for respondents, the judgments of this Court in **Surinder Kaur vs. Karanbir Singh**, 2004(3) RCR (Civil) 161 as well as **Sajjan Kumar vs. State of Haryana and others**, 2016 (1) PLR 494 are also to the same effect.

The matter is not so simple. In **Vadiraj Naggappa Vernekar (D) through LRs vs. Sharad Chand Prabhakar Gogate**, 2009(7) JT 202, Supreme Court has considered Order 18 Rule 17 and held as follows:

“17. It is now well settled that the power to recall any witness under Order 18 Rule 17 Civil Procedure Code can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, 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. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the Trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter.”

In my opinion, the conditions enumerated by the Hon'ble Supreme Court in the above judgment apply in the present case. It is not disputed that the same witness was to give the same nature of testimony in two petitions of similar nature wherein the suggestions put to him in cross-examination were also similar and in one case he rejected the suggestions while in other case he accepted the suggestions. There is a confusion as to what he was intending to say. Experience and common sense indicate that sometimes this kind of inadvertent error can take place, either while the testimony is being typed by the typist or where it may have been misheard by the typist in a crowded Court room where different proceedings are taking place simultaneously. It may be mentioned here that this is not a case where the petitioner wants to add some fact which could have been construed as filling up a lacuna in a case but he is saying that what he said was inadvertently and wrongly recorded. Learned counsel for the respondents is not in a position to explain how and in what circumstances the same witness would reject suggestions in one case and accept the same in a separate but similar case.

In the circumstances, the petition is allowed. The trial Court is directed to give one opportunity to the petitioner to re-summon the witness concerned so that he can be cross-examined by the respondent. This would be subject to ₹ 10,000/- as costs.

April 01, 2016
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(AJAY TEWARI)
JUDGE