

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

**CM No. 16397-CII of 2016 in/and
Civil Revision No.3566 of 2016**

Date of Decision:15.9.2016

Karam Pal

.....Petitioner

Vs

Hari Singh @ Dhangad and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.Rakesh Gupta, Advocate
for Mr.Rishi Nijhawan, Advocate,
for the petitioner.

Mr.Sanjay Verma, Advocate
for respondent No.1.

Mr.Vaibhav Prashar, Advocate for
Mr.H.R.Chaudhary, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J.

CM No. 16397-CII of 2016

Prayer made in this application is for preponing the
date of hearing i.e. 17.10.2016.

With the consent of learned counsel for the parties,
date of hearing is preponed for today and main case is taken up
for hearing .

Application stands disposed of.

Civil Revision No.3566 of 2016

Petitioner is aggrieved by the order dated 30.3.2016 passed by Additional Civil Judge (Sr.Divn.) Kaithal, vide which application for leading additional evidence to recall the plaintiff-petitioner as witness No.1 for further cross-examination by defendant No.1 was allowed.

Plaintiff-petitioner alleged that he entered into an agreement to sell with defendant No.1 on 19.1.2012 in respect of 9 kanals 6 marlas of land for a total sale consideration of ₹ 19 lakhs per acre. An amount of ₹ 4 lakhs was paid as earnest money and target date for execution and registration of sale deed was fixed as 6.6.2012. The suit in question came to be filed on 16.7.2012. In the written statement, defendant No.1 has denied the factum of agreement to sell, rather pleaded that the agreement to sell is forged and fabricated. The sale deed was executed in favour of defendant No.2 on the basis of agreement to sell dated 16.12.2011.

Plaintiff was examined as PW-1. He was cross-examined by defendant No.1 on 11.2.2016. As per vernacular statement of PW-1, the petitioner was recalled for cross-examination. The cross-examination was done by defendant No.1 through his counsel Sh. Mandeep Singh. It was deferred on the request of counsel for defendant No.2. The interlocutory orders passed by the Additional Civil Judge (Sr.Divn.) Kaithal on

11.2.2016 were to the following effect:-

“Two Pws are present. As per provisions of Order 18 Rule 4 CPC present case file is referred to Court Commissioner Sh. Shish Pal Malik, Advocate who is directed to record the testimony of the witness in attendance and return the file at once as and when the examination of witness is over. His remuneration is fixed at ₹ 200/- which shall be borne by the plaintiff. File be put up again after examination of the witness.”

“File put up before me by Court Commissioner Sh. Shispal Malik, Advocate along with his report, as per which cross of PW-1 is completed and examination of PW-2 also completed. Court Commissioner has received his remuneration of ₹ 200/- from plaintiff. Now, case is adjourned to 26.6.2016 for remaining evidence of the plaintiff. It shall be last opportunity.”

Thereafter, defendant No.1 filed an application for seeking permission of the Court to recall the plaintiff as witness No.1 for further cross-examination by defendant No.1. In the aforesaid application, the grounds for seeking such an indulgence were vaguely pleaded inasmuch as that no details of left out questions were given in the application. For ready reference, paras No.2 and 3 of the application are reproduced

here-in-below:-

“2. That previously the above mentioned suit was fixed for 11.2.2016 and on that day the applicant/ defendant No.1 through his counsel cross examined the PW-1 namely Karampal; however despite the due diligence but inadvertently some important questions, which go upto the roots of the present case qua the credibility of agreement to sell in dispute remained left to be put the above said PW-1 on behalf of defendant No.1 which are even otherwise are very necessary for the proper adjudication of the present suit.”

3. That the suit is fixed for the cross-examination of the PW-1 namely Karampal on behalf of defendant No.2 and no irreparable loss, injury prejudice is going to be caused to the plaintiff or defendant No.2 if the applicant/ defendant No.1 through his counsel be allowed to further cross-examine the abovesaid witness, on vice versa the applicant is going to suffer an irreparable loss and injury.”

It is necessary to note that defendant No.1 has already parted with the property in question after allegedly receiving an earnest money to the tune of ₹ 4 lakhs as per the case pleaded by the plaintiff. Having sold the property in favour of defendant No.2, defendant No.1 filed this application for

further cross-examination of the plaintiff without specifying as to which of the question was left to be put in the cross-examination of the plaintiff which already stood concluded on 11.2.2016. Defendant No.1 could not demonstrate in the application as to how the further cross-examination of the plaintiff was necessary, particularly when the cross-examination at the hands of defendant No.2 was deferred on 11.2.2016. Having sold the property in favour of defendant No.2, defendant No.2 would be at liberty to cross-examine the plaintiff as per his stand in the written statement.

Trial Court passed the impugned order dated 30.3.2016, allowing the recall of plaintiff for further cross-examination, which has been opposed by the petitioner on the premise that the recalling of witness for further elaboration on the left out points is wholly improbable in law. The purpose of Order 18 Rule 17 read with Section 151 CPC is very limited for which discretion of the Court has to be exercised in a very judicious manner. The inherent powers of the Court can only be invoked where there is no specific provision in the procedural law to meet out the given situation that too in the interest of justice.

In **Surinder Kaur vs. Karanbir Singh 2004 (3) RCR (Civil) 161**, this Court held that the provisions in terms of Order 18 Rule 17 CPC is merely an enabling provision for the

convenience of the Court and the same cannot be used by the parties to re-examine any witness in order to fill lacuna in the case. The power under Order 18 Rule 17 CPC has to be exercised sparingly that too in exceptional circumstances. Though, the Court may at any stage of the suit recall any witness, who has been examined and may put such questions to him as the Court thinks fit, but the said provision does not permit a party to re-examine any witness to fill lacuna in the case. The language of Order 18 Rule 17 CPC is limited to the extent of convenience of the Court where the Court requires such evidence to be led. The assistance of the Court for exercise of its inherent power under Section 151 CPC cannot be utilised to fill the lacuna in evidence. The inherent power is not to be exercised in a manner which will be in conflict with the procedure expressly provided in the Code.

The Hon'ble Apex Court in **Ram Rati vs. Mange Ram (D) through LRS. and others 2016 (2) RCR (Civil) 464** has embarked upon the controversy of such type where Hon'ble the Apex Court has ruled that recalling of witness for further elaboration on the left out points is wholly impermissible in law. The purpose of the provision in terms of Order 18 Rule 17 CPC is very limited and is discretionary in nature. This provision can be invoked for the convenience of the Court where the Court requires such evidence to be led. The discretion of the Court

has to be exercised judiciously and not arbitrarily. In the light of specific provision in the procedural Code, inherent power under Section 151 CPC cannot be invoked to meet out such exigencies. In the similar facts and circumstances, the Hon'ble Apex Court in the aforesaid case deprecated the alleged grounds of further elaboration on the left out points and came to the conclusion that the same is wholly impermissible in law.

In the light of aforesaid precedents, this Court does not subscribe the view adopted by the trial Court in the impugned order dated 30.3.2016.

This revision petition is accordingly allowed. Resultantly, impugned order passed by the trial Court is hereby set aside. Trial Court is directed to proceed further in the case without allowing defendant No.1 to further cross-examine the plaintiff in the light of observations made above.

(RAJ MOHAN SINGH)
JUDGE

September 15, 2016
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Whether Reasoned/Speaking Yes/No
Whether Reportable Yes/No