

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

**Civil Revision No.5299 of 2016**

**Date of Decision: 27.08.2016**

**Ranbir Singh**

**.....Petitioner**

**Vs**

**Smt. Swaran Kaur**

**.....Respondent**

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

Present: Mr. Inderjeet Singh, Advocate  
for the petitioner.

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**RAJ MOHAN SINGH, J**

[1]. Order dated 28.07.2016 passed by Civil Judge (Sr. Divn.) Jagadhri is under challenge at the instance of the plaintiff/petitioner whereby the application filed by him under Section 151 CPC for recalling of Ranbir Singh i.e. himself for cross-examination was declined by the trial Court.

[2]. Plaintiff/petitioner contended that his examination-in-chief by way of affidavit was conducted on 24.09.2012 and his cross-examination was deferred at the request of the defendant. Thereafter evidence of the plaintiff was closed on 05.10.2015 and the plaintiff remained under the impression that PW-1 Rabir Singh himself has been cross-examined.

[3]. At the stage of rebuttal and arguments, it came to the notice of learned counsel for the plaintiff that he has not been cross-examined so far, due to inadvertence. Plaintiff claimed that his cross-examination is necessary for the effective decision of the case, therefore, he be recalled for cross-examination.

[4]. It is found from the record that after framing of issues, the evidence of the plaintiff was started on 14.12.2011 and thereafter case was adjourned on number of occasions for plaintiff's evidence including the proceedings in terms of Order 7 Rule 11 CPC.

[5]. Plaintiff while moving the application for recalling himself for cross-examination alleged that his affidavit was tendered in examination-in-chief as PW-1 on 24.09.2012 and the cross-examination was deferred at the request of the defendant and thereafter evidence of the defendant was closed on 05.10.2015 and plaintiff remained under the *bona fide* impression that he has been cross-examined. At the stage of rebuttal, the factum regarding non-cross-examination of the plaintiff came to fore and the same is claimed to be inadvertent error.

[6]. The claim of the plaintiff has been refuted by the

respondent on the ground that despite numerous opportunities for producing evidence, plaintiff could not produce evidence, nor got himself cross-examined and the case was adjourned for many dates. On 12.07.2014, plaintiff instead of offering himself for cross-examination, first tendered the affidavit of another witness Malkeet Singh. Affidavit of plaintiff as well as Malkeet Singh were of even date i.e. 24.09.2012. The cross-examination of Malkeet Singh was conducted prior in point of time with all *mala fide* intention by the plaintiff.

[7]. At the time of cross-examination of Malkeet Singh, plaintiff Ranbir Singh remained present during the cross-examination of the said witness. This fact has been admitted by Malkeet Singh in his statement that plaintiff-Ranbir Singh stood behind him during his cross-examination and heard all his statement. After cross-examination of Malkeet Singh, when this fact was brought to the notice of the trial Court, the trial Court disallowed the cross-examination of Ranbir Singh on the ground that at the time of cross-examination of Malkeet Singh, he was very much present by his side and heard the entire statement. At the time of cross-examination of witness, the other witness is not supposed to be present in the Court. If the witness violates then, his statement cannot be recorded by the Court. As per requirement of Order 18 Rule 3-A CPC, where a party intends

to appear as a witness, it must subject itself to the cross-examination first before examination of other witnesses, except where the party obtains leave of the Court. In the instant case, at the time of examination and cross-examination of Malkeet Singh, the plaintiff was very much present in Court and he did not get himself cross-examined at first point of time before Malkeet Singh, nor he applied for any leave of the Court for doing so.

[8]. At this stage, the plaintiff knew the possible fall back of his case after hearing cross-examination of Malkeet Singh. A definite prejudice is likely to be caused in case of improvement made by the plaintiff, if allowed to be cross-examined at this stage. Moreover, the provisions in terms of Order 18 Rule 3-A CPC prohibits such a course and can only be exempted, if leave of the Court is taken.

[9]. Learned counsel for the petitioner refers to **Gurdas Bansal and others vs. M/s Blue Seas Sites Pvt. Ltd. and others, 2015(2) PLR 794** to contend that since the suit is at initial stage, the cross-examination of the plaintiff can be allowed. In the cited case, the fault was attributable to the defendants in effecting cross-examination on the witness of the plaintiff that ultimately caused the delay and also created a

situation where the plaintiff was left out from cross-examination. The order was passed in the facts and circumstances of the said case and has no universal application. It may be true that the provisions in terms of Order 18 Rule 3-A CPC are directory in nature and Court is not precluded of jurisdiction to grant such permission, but reasons are to be recorded for such indulgence which should germane to the facts of the case.

[10]. In ***The Amritsar Improvement Trust vs. Ishri Devi, 1979 PLJ 234***, the provisions in terms of Order 18 Rule 3-A CPC were held to be directory in nature, but at the same time reasons are required to be recorded while granting such permission and such reasons are the *sine qua non* for showing indulgence under the aforesaid provisions. Though the procedural law has to be liberally construed, but at the same time, that should not be allowed to snatch valuable right of the opposite party or to allow one of the party to fill lacuna in its case by adopting such a deprecatory practice.

[11]. The facts on record are apparent enough to decline indulgence. A party may tell lie, but the circumstances do not. It is highly imaginary to see that the plaintiff was not aware of himself, whether he was cross-examined or not? At the time of cross-examination of Malkeet Singh, he remained present

throughout. More particularly, the affidavit of Malkeet Singh and that of plaintiff were tendered on the same date i.e. 24.09.2012. When the plaintiff himself was present in the Court at the time of cross-examination of the witness, it does not lie to his mouth that he came to know about his non-cross-examination only during rebuttal evidence.

[12] It appears that plaintiff remained away from cross-examination intentionally so as to gather information in respect of weakness of his case by hearing the cross-examination of Malkeet Singh. Even though, the filing of application for seeking permission to be cross-examined may amount to a request for seeking leave of the Court, but the refusal on such application amount to declining the leave of the Court.

[13]. In the instant case, declining of such application amount to declining the prayer or leave of the Court on sound principles. Therefore, this Court is of the firm opinion that no indulgence can be granted to the plaintiff to fill up the lacuna in his case after hearing the cross-examination of Malkeet Singh and by not subjecting himself to cross-examination at the earlier stage in terms of Order 18 Rule 3-A CPC.

[14]. In view of aforesaid, this Court is of the considered view that the petitioner is not entitled to any indulgence by this Court.

The impugned order passed by the trial Court cannot be faulted with, nor the same is found to have any jurisdictional error. Resultantly, this revision petition is dismissed.

August 27, 2016  
*Atik*

**(RAJ MOHAN SINGH)**  
**JUDGE**

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|---------------------------|----------|
| Whether speaking/reasoned | Yes / No |
| Whether reportable        | Yes / No |