

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R No. 7883 of 2015

Date of decision : March 10, 2016

M/S Shoe Palace and another,

..... Petitioners

v.

Sham Lal and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Parambir Singh, Advocate
for the petitioners.

Mr. Sandeep Khunger, 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 9.11.2015 (Annexure P-9) passed by the Rent Controller rejecting an application for recalling the witnesses of the respondent-landlord for cross-examination.

As per the record produced before me, three witnesses were examined in chief on 17.12.2014 but the matter was deferred for remaining cross-examination on the request of counsel for the petitioner for 5.2.2015 but by that date, the tenant died and time was sought to bring his LRs on record. Ultimately, by order dated 9.3.2015, LRs were impleaded and the matter was adjourned to 20.4.2015 for filing amended title. On 20.4.2015,

the amended title was filed by the respondent. His witnesses were also present but the matter was again deferred for cross-examination at the request of counsel for the petitioner. On the next date, the LR's moved an application for amendment of the written statement which was allowed on 15.7.2015 and the matter was adjourned to 25.8.2015 for filing rejoinder and for evidence of the respondent. On 25.8.2015, the following order was passed :-

“ No rejoinder is filed. Two PWs are cross-examined and petitioner closed the evidence vide separate statement. Now to come up on 18.09.2015 for evidence of the respondent on filing of PF/DM/list of witnesses.”

It is conceded by both the learned counsel for the parties that actually three witnesses had been cross-examined on that date and it is inadvertently wrongly mentioned as two. Thereafter, on 18.9.2015, the petitioner moved an application for adjournment on the ground that he wanted to change his counsel since on the previous date he had not appeared himself and had sent a junior counsel. The matter was adjourned to 8.10.2015. On that date, the changed counsel moved an application stating that since the previous counsel had not appeared personally and had sent a junior counsel, the cross-examination was ineffective and sought permission to recall the witnesses for further cross-examination. That application having been rejected, the parties are before this Court.

Both the learned counsel for the parties have pressed various judgments into service. Without mentioning the details thereof, it can be safely said that the common thread running through these judgments is that a party cannot recall a witness for cross-examination under Order 18 Rule

17 of the CPC but the Court has a right to recall any witness in the interest of justice and as mentioned in K.K Velusamy v. N.Palanisamy, 2011(2) RCR (Civil) 875, by taking the aid of Section 151 of the CPC also permit a party to cross-examine the witness in an appropriate case. In all the cases where the application has been allowed or disallowed, the decision has turned on the facts of each case. Reference may be made to the decisions in K.K Velusamy's case (supra), Foodworld Super Markets Ltd v. H.Sujan Singh (SC), 2009(2) RCR (Civil) 950, Smt. Sudha Rani v. Life Insurance Corporation of India, 1980 PLR 579, Malkiat Singh v. Hardip Kaur, 1998(1) RCR (Civil) 582, Pawan Kumar Mundra & Anr v. Sat Pal Jain, 1989(2) RCR (Rent) 328, and Kans Raj v. Salig Ram Tandon, 1977(2) Rent LR 851, Joginder Singh v. Devinder Kumar, 1999(1) RCR (Civil) 109, Harbhajan Singh v. Tarlochan Singh, 2005(1) RCR (Civil) 847, Krishan Baldev v. Dev Singh 2012(8) RCR (Civil) 2540, Surinder Kaur v. Karanbir Singh 2004(3) RCR (Civil) 161, Gurmeet Singh and another v. Charanjit Kaur and another (CR No.4171 of 2012, decided on 2.3.2016).

Once the judicial consensus is that power of the Court to recall a witness and personally put questions to him or to permit a party to put questions is referable to the facts of each case, it would be apposite to peruse the reasons why the petitioner is seeking to recall the witnesses. As per counsel for the petitioner, after the filing of the petition and after the amendment made, the respondent had entered into an agreement to sell and had taken cheques in the amount of ₹ 40 lacs from the petitioner and these questions had to be put to the witness. On the other hand, counsel for the respondent states that this is a ruse of counsel for the petitioner because his

client never entered into an agreement to sell and what the petitioner did was to deposit cheques in the account of the landlord and then very conveniently stopped the payment. As per the learned counsel, if the agreement to sell had been executed and if the respondent had presented the cheques and the same had been cleared, the petitioner's claim would have become much stronger because he would have then morphed from being a tenant in possession to being an intended vendee in possession and that would have displaced the whole case of the landlord. Counsel for the petitioner has also admitted that the respondent had never actually signed the agreement to sell. In these circumstances, I am not able to persuade myself that the order passed by the Rent Controller is so vitiated as to be liable for interference in the extraordinary revisional jurisdiction of this Court. Consequently, this petition is dismissed.

March 10, 2016
`kk'

(AJAY TEWARI)
JUDGE