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

Civil Revision No.7941 of 2016

Date of Decision: 28.11.2016

Julfi Ram

.....Petitioner

Vs

Raj Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amardeep Singh Gill, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed order dated 30.08.2016 (Annexure P-7) passed by Civil Judge (Jr. Divn.) Jalandhar vide which an application for recalling of witness i.e. PW-1 Ram Saran was dismissed.

[2]. Brief facts are that the respondent/plaintiff filed a suit for mandatory injunction, directing the petitioner/defendant to hand over the vacant possession of the suit property as shown in the plaint. The suit was contested by the petitioner/defendant on the ground that he had purchased the property from respondent/plaintiff through his attorney Ram Saran for valuable consideration. After the aforesaid purchase in the year 1990,

respondent/plaintiff had no right in the property. Possession of the property was duly delivered to the defendant. Thereafter defendant had raised construction of his residential house on the suit property. Petitioner/defendant had got issued documents viz. ration card and electric connection in his name from the Department concerned. The factum of construction was known to the respondent/plaintiff, who never raised any objection and thereafter filed the suit in question with *mala fide* intention just to harass the petitioner/defendant.

[3]. Plaintiff led evidence and his evidence was closed on 08.11.2013. Thereafter on 17.02.2014, an application was filed by the plaintiff for amendment of the plaint. The said application was allowed on 22.08.2014 and amended plaint was accordingly filed. Plaintiff examined Ram Saran as PW-1 and one Parveen Kumar as PW-2. They were cross-examined. Defendant got examined Julfi Ram, Hans Raj and Pooja as defendant witnesses.

[4]. On 09.08.2016, petitioner filed an application for recalling the witness PW-1 Ram Saran on the ground that during cross-examination of Ram Saran, he had stated that he was attorney of Raj Kumar and was not attorney of Shiv Kapoor. In fact, Ram Saran was appointed as Attorney by Raj Kumar and Shiv Kapoor vide single document No.7636 registered on

01.02.1991 in the office of Sub-Registrar, Jalandhar. Since Ram Saran had deposed wrongly in the Court in his cross-examination that he was not attorney of Shiv Kapoor, therefore, his further cross-examination was thought appropriate as the relevant fact could not be asked at the time of his cross-examination. Further cross-examination of Ram Saran was claimed to be very material for just decision of the case, therefore, his further cross-examination was pressed into service.

[5]. Trial Court vide order dated 30.08.2016 dismissed the application on the ground that whether Ram Saran was attorney of Shiv Kapoor or not was not relevant in the context because case of the plaintiff was that he was owner of the property in question and this fact was admitted by the defendant in para No.1 of his written statement, where it was admitted that the plaintiff was earlier owner of the property and further sold the same to the defendant for valuable consideration. There was no such issue whether Ram Saran was attorney of Shiv Kapoor or not? Ram Saran was cross-examined on 24.09.2013 and after a gap of about three years, the present application came to be filed on 09.08.2016. Delay in filing the application was weighed with the trial Court. Taking into entirety of the facts and circumstances, the application was dismissed.

[6]. I have heard learned counsel for the petitioner at some length.

[7]. Though the Court had unfettered power to summon any witness which according to the Court would be necessary for just decision of the case. Order 18 Rule 17 CPC can be resorted to on the proposition, if Court feels that the further cross-examination of Ram Saran would give material disclosure to decide the case in an appropriate manner. In the present case since, as per the written statement, defendant had admitted the ownership of the plaintiff at one point of time and thereafter the plaintiff allegedly sold the same to the defendant for consideration, therefore, all these issues would be decided in the light of material on record.

[8]. Further cross-examination of Ram Saran on the issue of general power of attorney whether he was attorney of Shiv Kapoor or not would not be relevant in the controversy and that is why after cross-examination of Ram Saran on 24.09.2013, the defendant petitioner felt contended with the evidence on record and it was only after a gap of three years, the application in question was filed on 09.08.2016.

[9]. Keeping in view the stage and the projected necessity in filing the application, this Court found that there is no

necessity of further cross-examination of Ram Saran on the intended subject which has no relevancy, so far as the controversy in question is concerned. Delay in moving the application would also go in a way to dislodge the claim of the petitioner/defendant in seeking further cross-examination of PW-1 Ram Saran.

[10]. In view of aforesaid, I do not find any error of jurisdiction in the impugned order dated 30.08.2016 passed by the Civil Judge (Jr. Divn.) Jalandhar, nor the same is suffered with any perversity. This revision petition is accordingly dismissed.

November 28, 2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No