

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 621 of 2017**

1. Kamal, S/o. Aananda, aged about 46 years.
2. Jeevan Lal, S/o. Aananda, aged about 43 years.
3. Narayan Lal, S/o. Aananda, aged about 40 years.
4. Triveni Bai, D/o. Ananda, aged about 38 years.
5. Fagni Bai, D/o. Aananda, aged about 35 years.
6. Parmila, D/o. Ananda, aged about 33 years.
7. Kuvarya Bai, Widow of Ananda, aged about 65 years.

All petitioner No. 1 to 7 are resident of Village – Tola, Aanda Chhito, Kabirpara, Rajnandgaon, Chhattisgarh.

---Petitioners

Versus

1. Lakho Bai, Wife of Arjun Kalar, aged about 55 years, Resident of Lakholi, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
2. State of Chhattisgarh, through Collector – Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioners : Mr. C. K. Kesharwani, Advocate.

For State : Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07.09.2017

1. By the impugned order dated 18.07.2017, learned trial court has rejected the application filed by petitioners/plaintiffs under Order 18 Rule 17 of the Code of Civil Procedure, 1908 finding no merit.
2. Learned counsel for the petitioners/plaintiffs would submit that impugned order is unsustainable and bad in law.
3. I have heard the learned counsel for the petitioners and perused the impugned order.

4. The plaintiffs/petitioners sought leave of court to prove certain document by filing an application under Order 18 Rule 17 of CPC, which has been declined by the trial court by impugned order.

5. Order 18, Rule 17 of CPC provides as under:-

“17. Court may recall and examine witness.- The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

6. The **Bombay High Court in Balkrishna Shivappa Shetty v.**

Mahesh Nenshi Bhakta and others¹ has held as under:-

“11. As already observed above, since the provisions of law contained in Order 18, Rule 17 of the Code though nowhere empowers the Court to allow a party to cross-examine a witness by recalling such witness, and the impugned order having been passed in exercise of the provisions contained in Order 18, Rule 17, the same is unsustainable and is liable to be set aside. The contention that such powers can be exercised under Section 151 of the Code may be true in a given case provided the materials on record justify such order. As already observed above, in this case, mere failure on the part of the respondent Nos. 1 to 3 to take appropriate steps at appropriate time in relation to Exhibit-5, that will not enure to their benefit to seek the assistance of the Court for exercise of its inherent powers under Section 151 to enable the party to fill the lacuna in evidence. Besides, it should not be forgotten that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code, as has been ruled by the Apex Court in Padam Sen v. State of Uttar Pradesh, reported in AIR 1961 SC 218. The impugned order therefore cannot be justified under Section 151 as there is no material on record to warrant exercise of powers under Section 151 to allow the respondent Nos. 1 to 3 to recall the defendant No. 1 for the purpose of further cross-examination.”

1 AIR 2003 Bombay 293

7. This Court in Ajay Kumar Agrawal v. Smt. Sushila Bai and another² has held as under:-

“14. Even otherwise a reading of the subject application would clearly indicate that no prayer for recall of the witness was made. The only prayer made in the application was for permitting the plaintiff to prove the documents. Rule 17 Order 18 of the CPC nowhere provides for such permission for proving the document. It appears, the plaintiff being aware of the limitation that a witness cannot be recalled at the instance of a party to the suit, the application has been couched in such a language where he has sought permission to prove the document which once allowed would automatically have the effect of recalling a witness.”

8. Thus, in light of provision contained in Order 18 Rule 17 of CPC and in view of principles of law laid down in Ajay Kumar Agrawal(supra), no leave can be granted to recall a witness for proving a document at the instance of party to lis, therefore, trial court is absolutely justified in rejecting the said application. I do not find any jurisdictional error in the impugned order. The writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge