

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.369 of 2017

Dinesh Jaiswal, aged about 40 years, S/o Patelram Jaiswal,
R/o Bahatarai Chowk, Near Police Station Sarkanda, Bilaspur,
Police Station Sarkanda, Tahsil, Civil & Revenue District
Bilaspur (C.G.) Mo. No.9039813713

(Plaintiff)
---- Petitioner

Versus

1. Bajrang Sahu, aged about 32 years, S/o Ramkhilawan Sahu,
R/o Bahatarai Chowk, Near Police Station Sarkanda, Bilaspur,
Police Station Sarkanda, Tahsil, Civil & Revenue District
Bilaspur (C.G.) Mo. No.: - Not known.
2. State of Chhattisgarh, Through the Collector, Bilaspur, Police
Station Civil Lines, Tahsil, Civil & Revenue District Bilaspur
(C.G.) Mo. No.: - Not known.

(Defendants)
---- Respondents

For Petitioner: Mr. Ratnesh Kumar Agrawal, Advocate.
For Respondent No.2 / State: -
Mr. Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/08/2017

1. The petitioner/plaintiff calls in question legality, validity and correctness of the order passed by the trial Court granting application under Order 18 Rule 17 of the CPC permitting further cross-examination of the plaintiff's witnesses.
2. Learned counsel for the petitioner submits that such a cross-examination has been directed to be permitted by granting application only to fill-up the lacuna which is not permissible in law.

3. No one has appeared on behalf of defendant No.1 despite service of notice.

4. Order 18 Rule 17 of the CPC provides as under: -

“17. Court may recall and examine witness.—

The Court may, at any stage of 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.”

5. Order 18 Rule 17 of the CPC came up for consideration before the Supreme Court in the matter of **K.K. Velusamy v. N. Palanisamy**¹ in which Their Lordships have held that though Order 18 Rule 17 of the CPC enables the court, at any stage of a suit, to recall any witness who has been examined and put such questions to him as it thinks fit, but this power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties and this power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Their Lordships further held in paragraph 10 as under: -

“10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

1 (2011) 11 SCC 275

6. Thereafter, Their Lordships also considered the effect of earlier provision of Order 18 Rule 17A of the CPC and observed as under in paragraphs 14 and 19: -

“14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

19. We may add a word of caution. The power under [Section 151](#) or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

7. In view of the settled legal position and applying the same to

the facts of the present case, it is apparent that further cross-examination has been sought only on the ground that senior counsel engaged on behalf of defendant No.1 could not remain present at the time of cross-examination of the plaintiff's witnesses and they could not be adequately cross-examined which is nothing but an exercise to fill-up the lacuna which is impermissible in view of the provisions contained in Order 18 Rule 17 of the CPC as interpreted by the Supreme Court in **K.K. Velusamy** (supra).

8. Consequently, the order impugned deserves to be and is hereby set aside and the application under Order 18 Rule 17 of the CPC stands dismissed. The trial Court is directed to proceed further.
 9. The writ petition is allowed to the extent sketched herein-above.
- No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge