

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

Civil Revision No.262 of 2017

Date of decision: 13.02.2017

Vikas Bhargava

...Petitioner

Versus

Joginder Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Sanjay Vij, Advocate for the petitioner.

Mr. Amit Jain, Advocate for respondent no.1-Caveator.

G.S.SANDHAWALIA, J. (Oral)

Notice of motion.

Mr. Amit Jain, Advocate accepts notice on behalf of respondent no.1.

The petitioner-tenant challenges the order dated 16.12.2016 (Annexure P/1) whereby his application to recall witnesses PW-3 Parvesh Dahiya, Manager, Bank of India and PW-4 Rajinder Singh was declined.

Counsel for the petitioner submits that on 23.1.2017 Civil Misc. Application No.1316-CII of 2017 had been filed whereby copies of the Civil Suit and statement of PW-4 were placed on record as Annexures P/4 and P/5. In the said application, it was categorically mentioned that statement of PW-3 was not being placed on record as the bank official had already been examined by the applicant in his evidence. After examination of bank official, PW-3 who was sought to be recalled for further cross-examination is not required and the applicant confines his prayer to recalling of PW-4 only.

Vide order dated 6.2.2017, this fact was also noticed that

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13.02.2017
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counsel for the petitioner did not press the present petition for recalling of PW-4 since had already examined as respondent witness.

It is submitted that reference on 6.2.2017 was to PW-3 instead of PW-4 in the order dated 6.2.2017 which is accordingly accepted. It is further clarified that the same bank official was not recalled and one Lalit Narang, Senior Manager, Bank of India was examined on 19.1.2017 as RW-1. Therefore, counsel submits that as far as recalling of bank official is concerned, the prayer has become infructuous.

The issue thus remains as to whether the order dated 16.12.2016 (Annexure P/1) is justified regarding recalling of PW-4 Rajinder Singh.

It is the case of the petitioner that Rajinder Singh was an attesting witness of Ex. P-10 (rent agreement) dated 14.5.2009 between late Harjiwan Lal Bhargava which was executed with respondent Joginder Singh. It is the case of the petitioner that eviction petition is not maintainable as such since relationship of landlord and tenant was challenged and the tenancy which was being sought to be created on 14.5.2009 was on the basis of forged and fabricated document. The case of the petitioner is that a loan of ₹ 27 lakhs had been taken and father of the petitioner was paying interest to the tune of ₹ 30,000/- approximately and therefore, PW-4 Rajinder Singh was sought to be recalled who had appeared in the witness box on the said date without being a summoned witness.

It is further case of the petitioner that two cheques dated 5.2.2009 and 9.4.2009 for a sum of ₹ 35,000/- and ₹ 27,000/- respectively had been issued by late Harjiwan Lal Bhargava which was prior to the

alleged tenancy and therefore, it was necessary to put to the said witness and to demonstrate that there was a loan agreement interse the parties and there was no relationship of landlord and tenant.

During the course of arguments, it has been brought to the notice of the Court that the two cheques were never exhibited at that stage when PW-4 Rajinder Singh was examined on 15.9.2016. Therefore, argument that he had to be recalled and those two cheques were put to him is not liable to be accepted. Once two cheques had only been exhibited at a subsequent point of time on 19.1.2017 through Lalit Narang RW-1 this Court is of the opinion that the issue of recalling of said witness can be agitated afresh by the petitioner, if he so desires because cause of action has arisen at a later point of time.

In such circumstances, this Court is of the opinion at this stage that cause of action as such has not arisen. Since it is settled principle that the Court can recall and examine any witness if it feels fit in the facts and circumstances of the case and has to be satisfied for invoking the said provision. Reference can be made to **K.K.Velusamy Vs. N. Palanisamy** 2011(4) SCR 31 wherein the Apex Court has held as under:-

“Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The 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. The said power is not intended to be used to fill up omissions in the evidence of a witness who

has already been examined. [**Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate -2009(2) R.C.R. (Civil) 508 : 2009(1) R.C.R. (Rent) 502 : 2009 (2) R.A.J. 545 : 2009 (4) SCC 410**]. 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 moto, 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.”

Resultantly, the present revision petition is disposed of by keeping the rights of the petitioner open in case he so desires to file an appropriate application at a subsequent stage. It is made clear that any observations made in the impugned order shall not prejudice the Rent Controller, Gurgaon while deciding the fresh application. Similarly observations made in this order are also prima-facie and only notice the contentions of the parties and therefore anything said herein shall also not prejudice the Court below while deciding the application, if so filed by the petitioner.

February 13, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No