

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

CR No. 6747 of 2017

Date of Decision: 29.09.2017

BASANT SINGH

-PETITIONER

VS

SUKHDEV SINGH

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Dhirinder Chopra, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 15.09.2017 passed by Additional Civil Judge (Senior Division), Baghapurana vide which PW2 was re-called for his cross-examination so that his examination-in-chief can be read into evidence.

An application was filed under Section 137/138 of the Evidence Act by the plaintiff for cross-examination of PW2 Sukhdev Singh whose examination-in-chief was recorded on 05.05.2016 along with one Babu Singh as PW1. On 11.08.2016, cross-examination of PW1 was done but cross-examination of PW2 was not done. Thereafter, plaintiff evidence was concluded and the plaintiff was under the impression that cross-examination of PW2 was treated to be nil at the instance of the defendant.

Now on coming to know about the aforesaid latch, application under Section 137/138 of the Evidence Act came to be filed which has been allowed subject to payment of costs of Rs.2000/- by the trial Court.

Learned counsel for the petitioner by relying upon **Surjit Singh and others vs Jagtar Singh and other, 2007 (1) RCR (Civil) 537** contends that the plaintiff cannot be allowed to lead evidence in rebuttal in respect of an issue, the onus of which was on the plaintiff himself.

I have considered the argument raised by learned counsel for the petitioner but do not subscribe the argument raised by him simply for the reason that it is not a case of leading any such evidence at the stage of rebuttal which is covered by the ratio as laid down in **Surjit Singh's case (supra)**. It is only a case of cross-examination of PW2 whose examination-in-chief was recorded on 05.05.2016 and thereafter, cross-examination could not be done for the reasons as sought to be explained by the plaintiff on record. The witness can be re-called if the Court is satisfied in terms of Order 18 Rule 17 read with Section 151 CPC which is an enabling provision for convenience of the Court. Though the provision cannot be used by the parties to fill lacuna in the case, but if the Court is satisfied that the evidence of a party would enable

the Court to decide the case in an effective manner, the Court can grant indulgence in the aforesaid premise.

Reference can be made to Surinder Kaur vs. Karanbir Singh 2004 (3) RCR (Civil) 161 and Ram Rati vs. Mange Ram (D) through LRS. and others 2016 (2) RCR (Civil) 464.

It is true that evidence in the form of expert cannot be allowed at the stage of rebuttal to be led by the plaintiff in respect of an issue, the onus of which was on the plaintiff himself but in the instant case, indulgence has been granted by the trial Court for cross-examination of PW2 Sukhdev Singh subject to payment of costs. In the event of such permission, the defendant would be at liberty to avail his rights in accordance with law.

In view of above, I am of the view that there is no error of jurisdiction committed by the trial Court in passing the impugned order.

Accordingly, the present revision petition is dismissed.

29.09.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No