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

**Civil Revision No.7828 of 2015
Date of Decision: 27.09.2017**

BIKRAM SINGH

.....Petitioner

Vs

SATISH KUMAR AND ORS.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.R. Yadav, Advocate
for the petitioner.

Mr. S.S. Khurana, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has filed the present revision petition against the order dated 07.10.2015 passed by the Civil Judge (Jr. Divn.) Rewari vide which application for recalling of PWs examined by the plaintiff was declined and order dated 30.10.2015 whereby the petitioner was not allowed to examine other witnesses on the objection raised by the plaintiff.

[2]. At the very outset, learned counsel for the petitioner confines his prayer only for cross-examination of PW-1 and PW-5 by the petitioner and *qua* the second relief of examining

his witnesses, the petitioner would move appropriate application before the trial Court along with list of witnesses and thereafter the trial Court may pass appropriate order on the said application.

[3]. With the aforesaid statement, I proceed to decide this revision petition only in the context of prayer made by learned counsel for the petitioner for cross-examining the aforesaid witnesses viz. PW1 and PW-5.

[4]. Brief facts are that the petitioner was appointed as *Lamberdar* of the village on 25.02.2009 by the Collector, Rewari. His appointment was upheld by the Commissioner vide order dated 25.02.2010. Respondent No.1 filed a revision petition before the Financial Commissioner, which was dismissed on 20.01.2011. Respondent No.1 also unsuccessfully challenged the order of Financial Commissioner in CWP No.1607 of 2012 which was dismissed on 21.02.2014.

[5]. Learned counsel for respondent No.1 fairly admitted that even LPA filed against the aforesaid order dated 21.02.2014 was also dismissed by the Hon'ble Division Bench of this Court.

[6]. While appointing the petitioner as *Lamberdar* of the village, the Collector passed the following remarks against

respondent No.1.

“Satish Kumar candidate and his family are in illegal possession of the Panchayat Land and Shamlat land. He is not of clear image. Cases have been registered against him under different sections of the IPC and he remained confined in jail and was also wanted in electricity theft case.”

[7]. Respondent No.1 sought to get the remarks expunged by way of filing a civil suit before the trial Court. He did not implead the petitioner. Petitioner filed an application under Order 1 Rule 10 CPC before the trial Court which was dismissed. Feeling aggrieved against the same, petitioner filed CR No.474 of 2013 in which prayer of the petitioner was accepted by the co-ordinate Bench of this Court, however subject to a rider. The operative part of the order dated 12.09.2013 reads as under:-

“Since the prayer in the suit is for removal of some adverse remarks in the Collector's order, the Collector is a party. In my view, the presence of the petitioner is still relevant and his impleadment would be proper in the suit. It would seem to me that the plaintiff's declaration is not merely to remove a blot that has been made regarding his alleged illegal possession and alleged conviction in a case, but it is for a particular purpose of regaining an appointment which he has lost and which is the subject of challenge by means of the writ petition. The petitioner himself is the rival contender for the office and any decision in the civil court

will have a direct bearing to his own position as a subsequent appointee. Though not necessary party, the petitioner was still a proper party to the proceedings and the plaintiff in no way would be prejudiced by such impleadment. On the other hand, the presence of the petitioner would enable the court to secure an evidence of what had been brought before the Collector and he will ensure that there is proper defence that is made by the State and would vindicate his own selection subsequently in preference to the plaintiff.

The the respondent has an apprehension that the petitioner will utilize the opportunity of his presence in the suit to heap innuendos against the plaintiff and sully his esteem and good name. The court shall ensure that the defendant's presence is only in the context of adverse remarks entered for two instances in the order of the Collector. The petitioner shall not be permitted on impleadment to bring any other fact than the subject which is sought to be expunged from the Collector's order.”

[8]. Thereafter the petitioner filed an application before the trial Court for recalling of witnesses viz. PW-1 to PW-5 examined by the plaintiff on the ground that cross-examination of the witnesses were done prior to impleadment of the petitioner in the civil suit. On inspection of the case file on 26.08.2015, the facts came to fore which were required to be put to the witnesses in their cross-examinations. The prayer of the petitioner was declined by the trial Court vide the impugned order dated 07.10.2015. That is how the present revision

petition came to be filed for the composite relief out of which the second relief has been foregone by learned counsel for the petitioner with liberty to file an appropriate application before the trial Court as noticed in earlier part of the order.

[9]. Having considered the arguments at the bar, I am of the view that the permission needs to be given to the petitioner in view of fact that the petitioner was allowed to be impleaded in a revision petition before this Court, wherein permission was given to the petitioner to utilize the opportunity of his presence in the suit within the parameters of order dated 12.09.2013. The petitioner would cross-examine the witnesses only to extract the material relevant to the just decision of the case that too within the parameters of the aforesaid order. The trial Court would be at liberty to strike off any unnecessary details or information tried to be extracted by the petitioner from the witnesses. The trial Court shall ensure that the order dated 12.09.2013 is complied with during the cross-examination of the witnesses.

[10]. Of course the provision in terms of Order 18 Rule 17 CPC is merely an enabling provision for the convenience of the Court and the same cannot be used by the parties to re-examine any witness in order to fill lacuna in the case. The language of Order 18 Rule 17 CPC is limited to the extent of convenience of the Court where the Court requires such

evidence to be led. The assistance of the Court for exercise of its inherent power under Section 151 CPC cannot be utilized to fill lacuna in evidence. If the Court requires such evidence to be led for just decision of the case, there cannot be any embargo on exercise of such power. The reference can be made to **Surinder Kaur vs. Karanbir Singh, 2004(3) R.C.R. (Civil) 161** and **Ram Rati vs. Mange Ream (D) through LRs and others, 2016(2) RCR (Civil) 464.**

[11]. The recalling of witnesses for further elaboration of left out points is particularly in view of the fact that the petitioner was arrayed as necessary party at a subsequent stage and the same would enable the Court to consider the controversy in its right perspective and would also facilitate the Court in giving its just and appropriate decision.

[12]. In view of above, this revision petition is allowed to the extent as mentioned above.

September 27, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No