

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

CR No. 8750 of 2017(O&M)

Date of decision: 15.12.2017

Satpal Singh

.....Petitioner

VERSUS

Jaswinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. V.K. Sandhir, Advocate for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been laid against order dated 30.10.2017 (Annexure P-5) passed by the Civil Judge (Junior Division), Amritsar whereby application of the petitioner/plaintiff under Order 18 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') read with Section 151 CPC for recalling Parampreet Singh Goraya has been dismissed.

Counsel for the petitioner has submitted that the petitioner along with Sanjeev Duggal has filed a suit for possession by way of specific performance of agreement to sell dated 01.05.2010 executed by the defendants in respect of land measuring 27 kanals 12 marlas. The respondents/defendants did not deny execution of agreement to sell but raised certain issues with regard to agreement being fake and indefinite. It has been averred by the defendants that the plaintiffs failed to get the sale deed executed within the stipulated period as per agreement to sell thereby rendering agreement to sell incapable of being specifically enforced and earnest money paid by them stands forfeited. The plaintiffs adduced

evidence to prove their case with regard to their entitlement to seek specific performance of the agreement particularly their plea that they remained present in the office of Sub Registrar on 26.04.2011 and got their presence marked by way of an affidavit. The defendants in order to counter case of the plaintiffs and to establish their defence plea examined Parampreet Singh Goraya, the then Naib Tehsildar-cum-Sub Registrar Amritsar-II. The witness denied his signatures at point B of Ex.P6 and C of Ex.P5, the documents produced by the plaintiffs to establish that they were present in the office of Sub Registrar on 26.04.2011, the date fixed for registration of the sale deed. It is further argued that as the plaintiffs were not in possession of documents bearing initials of Parampreet Singh Goraya and therefore, could not confront the witness with those documents available in the office of Sub Registrar, Amritsar-II, the instant application was filed for recalling the witness for further cross examination. It is argued with vehemence that a serious prejudice would be caused to the petitioner in case the witness is not recalled for further cross examination when otherwise confronting the witness with documents initialed by him would extract the truth and prove that a public servant is guilty of misstating the facts and concealing truth from the Court for the reasons best known.

I have heard counsel for the petitioner perused the paper-book particularly the application (Annexure P-3), reply thereto (Annexure P-4) and the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to recapitulate provisions of Order 18 Rule 17 CPC. The said provision enables the Court, at any stage of a suit, to recall any witness who has been examined (subject to 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 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. There cannot be dispute about settled position in law that power under Order 18 Rule 17 CPC is discretionary and should be used sparingly to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. Equally true is that the said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. This provision is not intended to enable the parties to recall any witness for 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.

Reverting to the case at hand, perusal of application filed by the petitioner would make it evident that in para 2 thereof, it has been averred that Parampreet Singh Goraya DW-4 refused to identify his signatures on the document by saying that signatures on the documents are initials but he does not append his signatures as initials on any document. In para 3 of the application, it is stated that the plaintiff did not have any document on that day to counter the version stated by the witness but later he has got certain documents on which Mr. Parampreet Singh Goraya had signed by putting his initials, therefore, those documents are required to be put to the witness necessitating recalling him for his further cross examination in the interest of justice, equity and fair-play.

During the course of hearing, counsel for the petitioner has made available Xerox copy of testimony of Parampreet Singh Goraya DW-

4. Perusal of the statement dated 20.09.2017 would show that no such fact

that the witness does not append his signatures by way of initials had come on record either in examination in chief or cross examination conducted by counsel for the petitioner/plaintiff. This fact alone is sufficient to show that the application filed by the petitioner is based upon mis-statement of fact and liable to be rejected on this score alone. Merely because the witness had stated that the documents Ex.P5 and P6 relied upon by the plaintiffs did not bear his signatures and stated the same to be forged one does not give right to the petitioner to recall the witness for further cross examination for confronting him with some additional material/documents. The petitioner has failed to make out a case that falls within the purview and ambit of Order 18 Rule 17 CPC. That being so, discretionary jurisdiction exercised by the trial Court does not suffer from an error either in law or jurisdiction.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

DECEMBER 15, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no