

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

CR-9085-2017 (O&M)

Date of decision: 22.12.2017

GURDIAL SINGH

...Petitioner

Versus

GURMAIL KAUR AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Arvind Rajotia, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 13.12.2017 (Annexure P11) whereby application for recall of a witness of contesting party has been dismissed.

Counsel for the petitioner has submitted that the petitioner filed application under Order 9 Rule 13 CPC for setting aside ex-parte judgment and decree dated 27.02.2007 passed by the Civil Judge (Jr. Div.), Patiala. In those proceedings, an application was filed for recall of a witness for further cross-examination and the same was allowed by the trial Court. Gurjant Singh respondent No.4 filed CR No.8563 of 2015 to assail that order and same was allowed on 10.05.2016 (Annexure P6) and order impugned therein was set aside. Directions were issued to dispose of the case by passing the final order within two weeks. It is argued that due to

inadvertent mistake, a prayer was not made before this Court for disposal of the application for recall of a witness afresh and for that reason, the petitioner filed the instant application for disposal of the application for recalling the witness concerned. It is argued that a serious prejudice shall be caused to the petitioner in case the order impugned is not set aside.

I have heard counsel for the petitioner, perused the paper book particularly various annexures appended with the petition but find that the present petition is highly misconceived and liable to be rejected.

It is undisputed position of the case that order passed by the trial Court recalling the witness was set aside by this Court vide order Annexure P6. A relevant extract from the order reads as follows:-

“The grievance is that the petition Order 9 Rule 13 CPC is pending since last more than 3 years and no reasons were given as to why the petitioner was required to be recalled. The order passed is set aside and the Presiding Officer is directed to dispose of the case by passing the final order within two weeks from the date of the passing of the order and report to this Court.

Registry to inform the Presiding Officer to pass the order and inform the Court. Report be submitted before this Court on 02.06.2016.”

As the Court has set aside the order with a specific direction to the Court below to dispose of the case by passing the final order within two weeks, there was no occasion for the petitioner to file another application before the Court below for disposal of his application for recall of the witness. The application filed by the petitioner is a mischievous attempt to

delay the proceedings and violate the directions issued by this Court.

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

22.12.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No