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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 116/2017

RAJNISH

..... Petitioner

Through: Mr.Gopesh Tripathi, Advocate

versus

HARINDER SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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17.05.2017

CM No.18702/2017

For the reasons stated in the application, delay of 50 days in re-filing of the petition is condoned.

The application stands disposed of.

CM No.18701/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

C.R.P. 116/2017

1. By way of this petition, the petitioner/defendant is assailing the order dated 24th November, 2016 whereby the application filed by him for summoning Sh.Narveer Singh after the defence evidence has been closed, has been dismissed by learned trial Court for the following reasons:-

*“Heard the parties and gone through the record.
The defence evidence was closed way back on*

09.02.2016. Thereafter again application was moved on behalf of defendant u/o 18 rule 17 CPC seeking permission to lead further defence evidence by bringing bank deposits through the official of HDFC bank. The said application was allowed and bank official has now been examined. It is also quite apparent that name of said witness was though already available with the defendant much prior to leading of defence evidence even then he was not named as witness. The said fact is quite clear from the written statement. Even otherwise this witness is not relevant as defendant himself stated that said Rs.15,000/- was deposited in the account of Narveer Singh for the injuries to the injured in accident which occurred with the vehicle belonging to plaintiff.

The said fact of deposit of Rs.15,000/- has already come on record, therefore, the testimony of said Narveen Singh would be inconsequential as he cannot depose anything with respect to the relationship between plaintiff and defendant. In these circumstances, application in hand is dismissed.

Put up for final arguments on 17.12.2016.

*Sd/-
ASCJ/JSCC/G, Judge (East)
24.11.2016”*

2. Learned counsel for the petitioner has submitted that while filing the application for summoning the witness, name of Sh.Narveer Singh was mentioned but his address was not available and for that purpose the bank official of HDFC, Faridabad, where Sh.Narveer Singh was having account, was summoned, who deposed as a witness and thereafter, the petitioner came to know about the address of Sh.Narveer Singh in whose account the money was deposited to show that the respondent was solely responsible as the accident took place because of the negligent and rash driving of the driver of the respondent.

3. Learned counsel for the petitioner has also submitted that unless Sh.Narveer Singh is examined the petitioner would not be able to bring

the defence that the accident had occurred on 24th November, 2010 and money was deposited in the account of Sh.Narveer Singh towards compensation for the injury suffered by the passengers of the tempo which was hit by the driver of the respondent.

4. Learned counsel for the petitioner has been repeatedly questioned as to whether after the settlement of issues, in the lists of witnesses filed before the learned trial Court the name of Sh.Narveer Singh was mentioned, learned counsel for the petitioner, has repeatedly referred to Annexure-B which is the application filed on behalf of the petitioner/defendant for taking the list of witnesses on record and summoning the witness. In the said application names of three witnesses has been examined, namely, (i) Sh.Vipin Kumar, who has deposited ₹15,000/- in the account of Sh.Narveer Singh at HDFC Bank, Palwal; (ii) Official of the HDFC bank and (iii) Sh.Narveer Singh. This application is dated 2nd July, 2015 mentioning the date of hearing as 25th April, 2016.

5. Learned trial Court has rightly held that name of Sh.Narveer Singh was very much within the knowledge of the petitioner/defendant which fact is ascertainable from the written statement but neither he was cited as defence witness nor examined when the case was listed for that purpose. The learned trial Court has observed that the factum of deposit of ₹15,000/- in the HDFC Bank account has already come on record. In view of the fact that application was partly allowed, the HDFC bank official was examined despite the fact that defence evidence was closed long back. Learned trial Court has already exercised its discretion under Section 151 CPC by permitting the petitioner to examine the official from HDFC bank. The petitioner cannot be allowed to fill up the lacuna if any left.

6. In the decision reported as **K.K. Velusamy v. N. Palanisamy**, (2011) 11 SCC 275, the principles enunciated in **Vadiraj Naggappa Vernekar (Dead) Through LRs Vs. Sharadchandra Prabhakar Gogate**, (2009) 4 SCC 410, were reiterated in paragraphs- 9 and 10:

"9. 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.)

10. 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 motu, 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."

7. The power under Order XVIII Rule 17 CPC or under Section 151 CPC if allowed to be used in a routine manner, it would have the effect of defeating the very purpose of various amendments made in the Code of Civil Procedure to expedite the trials. The learned trial Court has made

observation that examination of Sh.Narveer Singh is inconsequential in view of the examination of bank official from HDFC bank. The learned trial Court did not feel it necessary to examine Sh.Narveer Singh as the same was not required to assist the Court in rendering justice.

8. The impugned order does not suffer from any illegality, infirmity or irregularity so as to exercise power under Section 115 of the Code of Civil Procedure.

9. The petition is dismissed.

PRATIBHA RANI, J.

MAY 17, 2017

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