

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No.872 of 2018

1. Smt. Meena Thakre W/o. Late Bhagwant Rao Thakre, aged about 66 years,
2. Ajay Thakre, S/o Late Bhagwant Rao Thakre, aged about 46 years,
Both R/o. Thakre Sadan, Seepat Road, Lane-situated In front of Hero Honda Show Room, Arvind Marg, Old Sarkanda, Bilaspur, Tahsil and District Bilaspur (CG)

---- Petitioners

Versus

1. Radha Bai W/o. Ranjit Rao Pawar, aged about 60 years, Occupation- Housewife,
2. Ashok Kumar, aged about 28 years,
3. Smt. Alka Pawar W/o. Shri Chandrakishore Rao Pawar, aged about 35 years, R/o All Next to Police Station Sarkanda, Gagan Aawas, House No.48, Near Pragati Vihar, Bahdarai Road, Bilaspur, Tahsil and District Bilaspur (CG)
4. The State of Chhattisgarh, through Collector, Bilaspur, District Bilaspur (CG)

---- Respondents

For Petitioners	:	Mr.Ram Kumar Tiwari, Advocate
For Respondent No.4	:	Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/10/2018

1. The petitioners'/plaintiffs' application under Order 18 Rule 17 of the CPC for recall of witness defendant No.2-Ashok Kumar has been rejected by the impugned order, against which this writ petition has been filed.
2. Learned counsel for the petitioners would submit that the impugned order is unsustainable and bad in law.
3. I have heard learned counsel for the petitioners and perused the impugned order.
4. Order 18 Rule 17 of the CPC states as under:-

“17. Court may recall and examine witness.-The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of

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evidence for the time being in force) put such questions to him as the Court thinks fit.”

5. The Supreme Court in the matter of **Vadiraj Naggappa Vernekar (dead) Through LRs v. Sharadchandra Prabhakar Gogate**¹ has held that Order 18, Rule 17 is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Main purpose of Order 18, Rule 17 is to enable court to clarify any doubts that may have arisen during the course of his examination. Court may recall a witness either on its own motion or on application by any party to the suit. Prejudice is not a ground for exercise of power by court. If evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, trial court may permit recall of such witness for re-examination-in-chief permission to defendants to cross-examine the witness.
6. Further, in the matter of **K.K. Velusamy v. N. Palanisamy**², Their Lordships of the Supreme Court have held power under Order 18, Rule 17 is only for clarification, i.e. to enable court to clarify any issue or doubt it may have in regard to evidence so that court itself can put questions to such witness and elicit answers. Once a witness is recalled for purposes of such clarification, court may, of course, permit parties to assist it by putting some questions. However, this power under Order 18, Rule 17 is not intended to be used to fill up omissions in evidence of a witness who has already been examined.
7. Reverting to the facts of the present case, it is quite vivid that defendant No.2-Ashok Kumar has already been examined and discharged and similar application has already been rejected on 10.9.2018.

1 (2009) 4 SCC 410

2 (2011) 11 SCC 275

- 8.** Following the principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is clear that Order 18 Rule 17 of the CPC is not intended to be used to fill up omissions in evidence of a witness who has already been examined particularly at the stage of final hearing. I do not any illegality in the impugned order.
- 9.** Accordingly, the writ petition deserves to be and is hereby dismissed. No cost(s). Copy of order be sent to trial court concerned.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-