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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8838 OF 2017

Debbbrata Rampado Sasmal

...Petitioner.

vs

Kishore Murpana

...Respondent.

.....

Mr Girishkumar V. Pandya for the Petitioner.

.....

**CORAM : B.P.COLABAWALLA, J.
NOVEMBER 22, 2018.**

P.C. :

This Writ Petition has been filed seeking to challenge the order passed by the Bombay City Civil Court, Greater Mumbai, in application below Exh.75. This application was filed by the Plaintiff under Order XVIII Rule 17 of the Code of Civil Procedure, 1908, for recalling the Defendant's witness No.1. This application, that was filed by the Plaintiff, has been rejected by the Trial Court, hence the present Writ Petition.

2 On going through the impugned order, I do not find that any interference is called for. Paragraph 5 and 6 of this order reads thus:

“5. *Perusal of the record reflects that the evidence of the plaintiff was over. The defendant filed the evidence affidavit at Exh.53 on 27/11/2014. The cross-examination of the defendant's witness was conducted on 22/01/2015, 25/02/2015, 08/07/2015 and 29/07/2015. Thereafter the defendant closed his side by pursis (Exh.60) on 29/07/2015. Thus, the record reflects that the plaintiff was given sufficient opportunity to cross-examine the defendant's witness. The cross-examination was in progress for about 6 months and the plaintiff was having the ample opportunity to cross-examine the defendant's witness.*

6. *Record further reflects that Issues were re-casted on 28/10/2015 and thereafter the plaintiff was allowed to file the additional evidence on re-casted issues. The evidence of the plaintiff was completed and now the plaintiff closed his side by pursis (Exh.73). The defendant opted not to file the additional evidence after re-casting of the issues and closed his side by pursis (Exh.74). Hence it reflects that the defendant do not want to lead additional evidence after re-casting of the issues. As discussed earlier, the cross-examination of the defendant's witness prior to re-casting of the issues was done extensively and is completed. As the defendant do not want to file additional evidence, there is no question for recalling the defendant's witness for cross-examination, as claimed."*

3 As correctly recorded by the Trial Court, as per the provisions of Order XVIII Rule 17 of the Code of Civil Procedure, 1908, it is the power of the Court to recall any witness at any stage of the suit, who has been examined and it is the power of the Court to put any question to the witness. The powers under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 are discretionary and to be exercised in exceptional circumstances. The Trial Court has exercised its discretion and rejected the application filed by the original plaintiff. I do not think that the discretion exercised by the Trial Court suffers from any perversity or is vitiated by any error apparent on the face of the record requiring my interference under Article 227 of the Constitution of India.

4 Further more, if the final Judgment and Decree is against the Petitioner herein, at the time when he assail the same, he is always free to assail even the order that has been impugned in this Writ Petition. This is yet another reason why I do not think that the present Writ Petition ought to be entertained. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)