

(109) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3902 of 2018

Date of decision:08.08.2018

Surinder Pal Singh

.... Petitioner

Versus

Harbhajan Kaur Kang and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Ruhani Chadha, Advocate for the petitioner.

B.S. Walia, J.

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for setting aside impugned order dated 04.05.2018 (Annexure P-5) passed by the learned Civil Judge, Junior Division (NRI Cases), Jalandhar dismissing the application (Annexure P-3) for recalling the respondent/plaintiff No.1 Harbhajan Kaur for further cross-examination by the petitioner/ defendant.

[2] Brief facts of the case leading to the filing of the instant revision petition are that the respondents/plaintiffs had filed a suit for declaring them to be owners of the property in dispute on the basis of Will. The petitioner /defendant filed application (Annexure P-3) in the said suit for recalling the respondent/plaintiff No.1 Harbhajan Kaur for further cross-examination on the ground that when respondents/plaintiffs had led their evidence, the petitioner/defendant was not in India and his counsel could not ask proper and vital questions in cross-examination with regard to maintenance of Chanan Kaur.

[3] Application (Annexure P-3) for recall of respondent/plaintiff No.1 – Harbhajan Kaur for further cross-examination was filed by the petitioner/defendant alleging that property was owned by Gurbachan Singh and Chanan Kaur and the same was bequeathed in his favour vide registered Will dated 07.03.2011 as he used to look after them and provide them all facilities and amenities of life, it was he who had settled his entire family abroad and arranged sponsorship for his sisters and solemnized their marriages in England by spending huge amount, that for most of the times, his parents used to reside with him in England, he had also spent huge amount in the marriage of Harbhajan Kaur in India, that the respondents/defendants had filed a false and frivolous suit against him on the basis of forged and fabricated Will dated 17.02.2012 got executed by the respondents/plaintiffs and there was no occasion for his mother Chanan Kaur to disinherit him from the property, that the respondents/plaintiffs had led evidence but the petitioner/defendant was not in India at that time, therefore, his counsel could not ask proper and vital questions in cross-examination with regard to maintenance of Chanan Kaur as well as her being looked after and the aforementioned facts had come to his notice on 30.10.2017 when he had come to depose in the case and since some vital questions were required to be put to respondent No.1 – Harbhajan Kaur, therefore, she was required to be recalled for further cross-examination.

[4] Reply was filed by respondent/plaintiff No.1, opposing the application on the ground that numerous opportunities were granted to the petitioner/defendant for her cross-examination and that her cross-examination was conducted at length, therefore, the application (Annexure P-3) was an abuse of process of law. The last Will executed by Chanan

respondents/plaintiffs contained recital that Chanan Kaur had cancelled her previous Will which she had executed in favour of the petitioner/defendant. It was also averred in the reply that the petitioner/defendant never looked after his old parents, therefore, his mother Chanan Kaur had cancelled will executed in favour of the petitioner/defendant and executed last Will in favour of the respondents/plaintiffs.

[5] A perusal of the record reveals that respondent/plaintiff No.1 – Harbhajan Kaur was examined in chief on 23.09.2016 and was cross-examined at considerable length on 07.11.2016. Respondent/plaintiff No.1 – Harbhajan Kaur had already concluded her entire evidence and even petitioner/defendant had also examined his three witnesses.

[6] No doubt, under Order 18 Rule 17 of the CPC, the Court may at any stage of the suit recall any witness who has been examined and may subject to the law of evidence for the time being in force put such questions to such witness as the Court thinks fit, but the aforesaid provision is only for the purpose of clarification of any doubt which the Court may have with regard to the evidence led by the parties. Hon'ble the Supreme Court in case titled as **Ram Rati v. Mange Ram (D) through LR's and others, 2016 (2) RCR (Civil) 464** has categorically held that recalling of witness for further elaboration on left out points, is wholly impermissible in law. Learned Civil Judge (Jr. Div.) (NRI cases), Jalandhar accordingly dismissed the said application (Annexure P-3).

[7] The application (Annexure P-3) categorically mentions that proper and vital question could not be put to respondent/plaintiff No.1 – Harbhajan Kaur in her cross-examination, therefore, she was required to be re-called for further cross-examination. The decision of Hon'ble the

to be recalled for further elaboration on left out points. Relevant extract of the said decision as referred to above is reproduced as under:-

“The basic purpose of Rule 17 is to enable the Court to clarify any position or doubt, and the Court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the Court recalls the witness for the purpose of any such clarification, the Court may permit the parties to assist the Court by examining the witness for the purpose of clarification required or permitted by the Court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. No prejudice is caused to either party is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the Court but to be used only sparingly, and in case, the Court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.”

[8] In the light of the position as noted above, I find no infirmity whatsoever with the well-reasoned order passed by the learned Civil Judge (Jr. Div.), (NRI cases), Jalandhar.

[9] Accordingly, finding no merit in the revision petition, the same is dismissed in limine.

(B.S. Walia)
Judge

08.08.2018
amit

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No