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

CR No.4156 of 2018

Date of Decision: 04.07.2018

Harcharan Singh

....Petitioner

Vs

Jatinder Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Gupta, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioner has challenged the order dated 31.05.2018 passed by Additional Civil Judge (Senior Division), Ludhiana vide which the application filed by the defendants for re-calling of PW1 Gurdeep Singh son of Gurbax Singh- attorney of the plaintiff for cross-examination was allowed by invoking powers under Order 18 Rule 17 CPC.

2. The Court while granting indulgence in the aforesaid context passed the impugned order. The operative part of which is as under:-

*“The facts of present case in hand,
specially the averments in the application,
where the applicants have specifically*

pleaded that they are not the trespasser nor having any evil eye on the property of plaintiff, which suggests that the applicants wants to prove their own sale deeds, which were executed in their favour but, they are not going to dispute the ownership of respondents and to my view, the applicants have every right to establish their rights in the property, which they have right and respondent may not having any concern and therefore, the cross-examination of plaintiff witness would not only bring the real controversy on the fore, but also helpful to the court to decide the controversy between the parties for all the time to come in the future. It is also important to note that only one witness has been examined by respondent/plaintiff and that too, the attorney of the plaintiff and to my view, the cross-examination of aforesaid witness is very much necessary for proper adjudication of the case. Accordingly, present application in hand is allowed, but subject to costs of

Rs.2000/- and also to avail one time opportunity to cross-examine the said witness on the next date of hearing. In case, applicants fail to cross-examine the witness on the date fixed, no further opportunity shall be granted to applicant for further cross-examination. In these terms' application stands disposed off."

3. Evidently, the defence of the defendants was struck off and the said order has attained finality. Defendants are not aggrieved by the said order but they prayed for an opportunity to cross-examine PW1 as earlier opportunity could not be availed despite due diligence. The defendants have some semblance of interest on the basis of sale deed and have a right to establish their rights in the property by way of cross-examination of the plaintiff witness.

4. The powers of the Court in terms of Order 18 Rule 17 CPC are well recognized.

5. In **Surinder Kaur vs Karanbir Singh, 2004(3) RCR (Civil) 161**, this Court held that the provision in terms of Order 18 Rule 17 CPC is merely an enabling provision for convenience of the Court and the same cannot be used by the parties to re-examine any witness in order to fill lacuna in the

case. The power under Order 18 Rule 17 CPC has to be exercised sparingly. The Court at any stage of the suit may recall any witness who has been examined and may put such questions to him as the Court thinks fit. The language used in the aforesaid provision is limited to the extent of convenience of the Court where Court requires such evidence to be led.

6. The Hon'ble Apex Court in **Ratti Ram vs Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464** has also embarked upon the controversy of such type where the Court has ruled that recalling of witness for further elaboration of left out points is wholly impermissible but the provision is discretionary and the same can be invoked for the convenience of the Court where the Court requires such evidence to be led. The discretion of the Court has to be exercised in a judicious manner.

7. The indulgence granted by the trial Court under Order 18 Rule 17 CPC cannot be termed to be without application of mind. The rule of procedure is handmaid of justice and in my considered opinion, indulgence granted by the Court is based on the convenience of the Court where the Court thought it appropriate to grant indulgence in favour of the defendants to cross-examine PW1 even though earlier opportunities were granted to cross-examine the witness.

8. No fault can be found in the impugned order passed by the trial Court.

9. This revision petition is accordingly, dismissed.

04.07.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No