

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

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**CR No.4374 of 2018 (O&M)
Date of Decision: July 12, 2018**

Ishwar Khan

.....PETITIONER(s).

VERSUS

Lalan Wala Peer Khana Welfare Committee (Regd.)
and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Mohd. Yousaf, Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

Through the present petition, the petitioner challenges the order dated 14.05.2018, passed by the Additional Civil Judge (Senior Division), Dhuri (for short – the Trial Court) dismissing the application filed by the petitioner under Order 18 Rule 17 CPC for recalling PW-1 Raj Khan for further cross examination.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that respondent No.1 had filed a suit seeking therein permanent injunction to restrain the petitioner and other defendants therein from encroaching upon the property of respondent No.1 which was described as Lalan Wala Peer. On being put to notice the petitioner and the other defendants filed their written statements. The Trial Court then framed issues after which respondent No.1/plaintiff led and completed his entire evidence. Thereafter, the petitioner was granted several opportunities to complete his evidence but he failed to do so.

Instead, an application was filed by the petitioner under Order 18 Rule 17 CPC for recalling of PW-1 Raj Khan for further cross examination. Such application was dismissed by the Trial Court, giving a cause to the petitioner to file the present petition.

Learned counsel for the petitioner submits that though PW-1 Raj Khan had been cross examined earlier, on change of counsel by the petitioner it was felt that Raj Khan PW-1 could not be confronted with certain material documents which would go to the root of the matter. Questions like whether on the suit property there was a 'kabristan' or Lalan Wala Peer were also required to be put to him.

The submissions made by learned counsel for the petitioner have been considered but no merit in the same is found.

PW-1 Raj Khan was cross examined by the petitioner's counsel at length. It is not disputed that at the time of his cross examination, counsel for the petitioner had put a question to him with regard to the existence of Lalan Wala Peer Khana on the suit property. Once at the time of examination of PW-1 Raj Khan adequate opportunity was granted and availed of by the counsel for the petitioner to cross examine him, merely on change of counsel, the witness could not be allowed to be recalled for further cross-examination especially when the main question which is sought to be put to the witness has already been put to him. PW-1 Raj Khan also could not be allowed to be recalled after the plaintiff has led its entire evidence and the defendants too have partly led their evidence especially when no cogent ground for exercising such discretionary power is made out.

As observed earlier, the entire evidence of plaintiff has been

as many as ten opportunities to complete their evidence but they failed to do so. Instead, they filed the instant application seeking recalling of PW-1 Raj Khan for further cross examination. It appears that the application in question was moved with the primary object of delaying the proceedings.

In view of the above, no error in the impugned order passed by the Trial Court is found.

Dismissed.

July 12, 2018
A.Kaundal

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No