

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

**Civil Revision No.4535 of 2018
Date of Decision:19.7.2018**

Nisha Sharma

.....Petitioner

Vs

Pritam Singh and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.A.S.Bhatti, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

Petitioner is aggrieved by the order dated 14.5.2018 passed by Civil Judge (Jr.Divn.) Moga, vide which application for recalling DW Surjit Singh for further cross-examination was rejected.

A perusal of record would show that the aforesaid provision has been resorted to on the ground that evidence of the defendants was closed vide order dated 8.2.2018. At the instance of the defendants, said order was recalled by the trial Court on 19.2.2018 and two opportunities were afforded to the defendants to lead evidence i.e. on 6.3.2018 and 13.3.2018. It appears that the defendants did not avail the aforesaid opportunities in correct perspective and the case was further adjourned for 20.3.2018, 26.3.2018, 3.4.2018 and 16.4.2018 for

evidence of the defendants. Defendants could not conclude their evidence and thereafter, filed the application in question. It also appears from the record that DW Surjit Singh was cross-examined on 13.3.2018 by learned counsel for defendant No.6-petitioner and the case was adjourned for 20.3.2018 for further cross-examination of the witness. On the adjourned date i.e. on 20.3.2018, the witness was further cross-examined by learned counsel for the plaintiffs only. The opportunity was not availed by learned counsel for defendant No.6/petitioner. The grievance of the petitioner is that the witness has taken 'U' turn in the cross-examination conducted by the plaintiffs. By filing the application in question, petitioner-defendant No.6 sought to recall the witness for further elaboration of left out points those could not be put in the cross-examination of DW Surjit Singh on 13.3.2018. Provision in terms of Order 18 Rule 17 CPC cannot be utilised by either of the party according to their whims.

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 the 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 that too in exceptional circumstances. Though, the Court may at any stage of the suit recall any

witness, who has been examined and may put such questions to him as the Court thinks fit, but the said provision does not permit a party to re-examine any witness to fill lacuna in the case. The language of Order 18 Rule 17 CPC is limited to the extent of convenience of the Court where the Court requires such evidence to be led. Even the assistance of the Court for exercise of its inherent jurisdiction under Section 151 CPC cannot be utilised to avail the benefit of aforesaid provision.

The Hon'ble Apex Court in **Ram Rati vs. Mange Ram (D) through LRS. and others 2016 (2) RCR (Civil) 464** has held that recalling of witness for further elaboration of the left out points is wholly impermissible in law. The purpose of the provision in terms of Order 18 Rule 17 CPC is very limited and the Court has to exercise its discretion in a judicious manner. The trial Court has not exercised its discretion even at the instance of the petitioner, which in considered opinion of this Court cannot be invoked even as per convenience of the Court which has not been recorded in the present case. Finding no merit in this revision petition, the same is hereby dismissed.

(RAJ MOHAN SINGH)
JUDGE

July 19, 2018
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Whether Reasoned/Speaking Yes/No
Whether Reportable Yes/No