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

CR No. 7714 of 2018

Date of Decision: 15.11.2018

Avtar Singh

-Petitioner

Vs

Geeta Rani and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rakesh Chopra, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Plaintiff-petitioner has challenged the order dated 05.05.2018 passed by Additional Civil Judge (Senior Division), Fatehgarh Sahib vide which application filed by the plaintiff for recalling of DW2 for further cross-examination was declined.

Perusal of the record would show that affidavit of DW2 was tendered in examination-in-chief on 29.11.2016 and thereafter, the witness kept on appearing on each and every date but his cross-examination was conducted for the first time on 28.08.2017 and ultimately, the same was concluded on 08.09.2017 after deferring the same on earlier occasions. Thereafter, the plaintiff sought further cross-examination of DW2 on the ground that material questions could not be asked as the plaintiff was not present in person to instruct his

counsel. The application for further cross-examination of DW2 has been filed without mentioning any provision of law but the same can be visualized in the context of provision in terms of Order 18 Rule 17 CPC.

Learned counsel relies upon **Shera vs Assa Ram, 1987 (1) PLR 463** to contend that re-calling of DW can be allowed as the party cannot suffer on account of any omission or lapse on the part of his counsel. In the aforesaid case, application was filed under Order 18 Rule 17/17-A CPC for re-calling of DW.

Power under Order 18 Rule 17 CPC can only be invoked as per convenience of the Court i.e. to enable the Court to clarify any issue or doubt. It may have in respect of evidence led by the parties by re-calling any witness so that the Court itself can put questions to such witness and elicit answers. However, this power under Order 18 Rule 17 CPC is not intended to be used to fill omission in evidence of a witness who has already been examined.

The ratio of **K.K. Velusamy vs N. Palanisamy, (2011) 11 SCC 275** can be relied. Power under Order 18 Rule 17 CPC has to be exercised sparingly that too under exceptional circumstances. Though the Court at any stage of the suit can re-call any witness who has been examined and may put such questions to him as the Court thinks fit but the said exercise does not permit a party to re-examine a witness or to fill lacuna in the case. 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. The assistance of the Court for exercise of its inherent power under Section 151 CPC cannot be utilized to fill lacuna in evidence. The inherent power is not to be exercised in a manner which will be in conflict with the provision under Order 18 Rule 17 CPC.

The ratio laid down by Hon'ble Apex Court in **Ratti Ram vs Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464** can be relied to say that the aforesaid ratio has embarked upon the controversy of such type where the Hon'ble Apex Court has ruled that recalling of witness for further elaboration on left out points is wholly impermissible in law. The purpose of provision in terms of Order 18 Rule 17 CPC is very limited and is discretionary in nature and the same can be invoked for the convenience of the Court.

Filing of application under Section 151 CPC for seeking inherent power of the Court cannot be utilized in place of Order 18 Rule 17 CPC. The witness was cross-examined on 28.08.2017 as well as on 08.09.2017 by the learned counsel for the plaintiff. No such question was put to the witness. Cross-examination of the witness after tendering his evidence on 29.11.2016 conducted on 28.08.2017 and 08.09.2017 would show the conduct of the plaintiff in pursuing the litigation.

Prejudice is not a ground for exercise of powers by the

Court. Principles are akin to Section 47 CPC where the party makes an application under provision of Order 18 Rule 17 CPC. It is ultimately within the Courts discretion. The principle laid down by the Hon'ble Apex Court in Vadiraj Nagappa Vemekar vs Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410 is also a proposition on the point which can be relied in the present case.

For the reasons recorded hereinabove, I find no error of jurisdiction in the impugned order passed by the trial Court.

This revision petition is accordingly, dismissed.

15.11.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No