

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

(104)

CR no.9108 of 2017

Date of Decision: 21.11.2018

Jagdish

...Petitioner

Vs.

Jitender

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Sanchit Punia, Advocate, for the petitioner.
Mr. Lajpat Sharma, Advocate, for the respondent.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner has challenged the order of the learned trial court dated 05.12.2017, by which the petitioners' application seeking to recall the plaintiff and one Sunil (PW-3 and PW-4 respectively) for further cross-examination, stands dismissed.

Notice having been issued in this petition, Mr. Lajpat Sharma, Advocate, appears for the respondent and submits that the trial court did not err while dismissing the application, holding that simply because the counsel for the petitioner-defendant had changed, that would not give him a right to recall witnesses, and if such recalling was to be allowed in each trial, it would start happening time and again.

He further submits that there is no provision by which a witness can be recalled.

He also relies upon a judgment of a Division Bench of the Delhi High Court in Rita Solanki v. Jai Solanki [MAT. APP(F.C.)

104/2016, decided on 16.08.2016], wherein an order passed by the trial court dismissing a similar application seeking to recall the petitioners' witnesses (the petitioner was seeking a divorce) was upheld.

It is seen that in the said case, evidence had been led by both parties and in fact had been closed and the petition was listed for final arguments when the application was filed for recalling the petitioner and other witness for cross examination, with an application seeking to lead additional evidence also filed, both of which were dismissed.

Though learned counsel is absolutely correct (as is the trial court) that such a practice adopted by any party is to be highly deprecated, the situation in the present case is different to the extent that even upon query, learned counsel for the respondent herein had taken instructions that the petitioner has still not opened his evidence as a defendant, though evidence of the respondent-plaintiff was closed on 16.08.2017, with the application for recalling of the witness having been filed on 09.10.2017, at the stage when the applicant-defendant (petitioner herein) was to start leading his evidence, (though it was a third opportunity granted to him to do so).

Though learned counsel for the respondent has also submitted that the respondent-plaintiff would be prejudiced if this petition was to be allowed, I find myself unable to agree with that contention, other than agreeing that the fact that definitely the trial would get postponed and delay would be suffered by the plaintiff for no fault of his.

Other than that, with none of the petitioners' witnesses having been examined and obviously no cross-examination of those witnesses

having even come about, any other prejudice is not seen to be occurring.

Consequently, even while again holding that the application has been filed at a stage after cross-examination of the aforesaid two witnesses had already been concluded, with the plaintiffs' evidence therefore closed, the reason as given in the application being that the Advocate originally engaged to conduct the proceedings on behalf of the defendant had not effectively cross-examined the plaintiff and PW4, and more importantly, no further evidence at all having been led by the defendant as yet, I consider it appropriate to allow this petition.

The impugned order is set aside, with the petitioner granted two effective opportunities to cross-examine each of the witnesses aforesaid, i.e. PW-3 and PW-4, subject to the petitioner paying a cost of Rs.10,000/- to the respondent.

21.11.2018
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes