

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 344 of 2018**

Smt. Kachari Bai, W/o late Sundarlal @ Bhagoli Ram Yadav, aged about 65 years, R/o Back Side of New Police Station, Indirapara, Bhilai-3, Tahsil-Patan, District Durg (C.G.)

Through: Power of Attorney Holder, Sudhri Kumar Yadav @ Santosh Yadav, S/o Late Sundarlal @ Bhagoli Ram Yadav, Aged about – 9 years, R/o Back Side of New Police Station, Indirapara, Bhilai-3, Tahsil – Patan, District Durg (C.G.)

----Petitioner/Plaintiff

Versus

Tirath Puriya, S/o Gullu Prasad, aged about 50 years, R/o Beside of Hanuman Mandir Physical exercise training school, Indira Nagar, Tikrapara, Bilaspur, Tahsil & District – Bilaspur (C.G.)

---- Respondent/defendant

For Petitioner	: Ms. Kiran Singh, Advocate.
For Respondent	: Mr. Faiz Kaza, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/01/2019

1. By the impugned order dated 16.02.2018, petitioner's application under Section 151 of the Code of Civil Procedure, 1908 (henceforth "CPC") and under Order 18 Rule 17 of the CPC read with Section 138 of the Evidence Act has been rejected against which instant writ petition has been preferred.

2. Learned counsel appearing for the petitioner would submit that the trial Court is absolutely unjustified in rejecting the application filed by the petitioner under Section 151 of the Code of Civil Procedure, 1908 (henceforth "CPC") and under Order 18 Rule 17 of the CPC read with Section 138 of the Evidence Act, which is liable to be set aside.

3. On the other hand, counsel for the respondent would support the impugned order.
4. I have heard learned counsel appearing for the petitioner and perused the impugned order with utmost circumspection.
5. Defence Witness No. 1 – Shailesh Puriya has already been examined and cross examined on 21.11.2017 and application has been filed for recalling the said witness for further examination, which has been declined by the trial Court by the impugned order.
6. Order 18, Rule 17 is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Main purpose of Order 18, Rule 17 is to enable court to clarify any doubts that may have arisen during the course of his examination. Court may recall a witness either on its own motion or on application by any party to the suit. Prejudice is not a ground for exercise of power by court. If evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, trial Court may permit recall of such witness for re-examination-in-chief permission to defendants to cross-examine the witness. {See: **Vadiraj Nagappa Vernekar v. Sharadchandra Prabhakar Gogate**¹}
7. Power under Order 18, Rule 17 is only for clarification, *i.e.* to enable court to clarify any issue or doubt it may have in regard to evidence led by parties by recalling any witness so that court itself can put questions to such witness and elicit answers. Once a witness is recalled for purposes of such clarification, court may, of course, permit parties to assist it by putting some questions. However, this power under Order 18, Rule 17 is not intended to be used to fill up omissions in evidence of a witness who has already been examined.

{See **K.K. Velusamy v. N. Palanisamy**²}
8. Reverting to the facts of the case in light of provisions contained in Order 18 Rule 17 of the CPC & afore-cited judgments of the Supreme Court, it is quite vivid that further

1 (2009) 4 SCC 410

2 (2011) 11 SCC 275

cross-examination of defendant witness No. 1 - Shailesh Puriya has been sought only to fill-up the lacuna and, therefore, the trial Court is absolutely justified in dismissing the application under Section 151 of the Code of Civil Procedure, 1908 (henceforth "CPC") and under Order 18 Rule 17 of the CPC read with Section 138 of the Evidence Act and I do not find it either perverse or contrary to the record.

9. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed.

10. Copy of this order be sent to the trial Court through concerned District Judge for compliance and needful.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

