

Rajendra Vitthal Bahirat and Another	...Petitioners
vs.	
Prakash Ramchandra Girame	...Respondent
Mr. Sitesh Sharma a/w. Mr. V.D. Upadhyay, for the Petitioners	
None for the Respondent	

DATE : MARCH 13, 2019

Heard Mr. Sharma, learned counsel for the Petitioners.

2. The challenge in this Petition is to the order dated 1st February, 2019 by which the learned trial Judge has rejected the Petitioner's (judgment debtor) application under Order 18 Rule 17 read with Section 151 of Code of Civil Procedure for recall of Mr. Korke, the Court Commissioner who was examined as a witness in the execution proceeding. Mr. Sharma, learned counsel for the Petitioners state that the Petitioners require to pose the Court Commissioner only nine questions which are absolutely relevant and which will in fact assist the Court in ascertaining the

dimensions and location of the suit property. He submits that the Petitioners will have no objection if these nine questions are posed to the Court Commissioner by the learned trial Judge himself. He places reliance on ***K.K.Velusamy vs. N. Palanisamy, 2011(3) All MR (SC) 445*** in support of the proposition that powers under Order 18 Rule 17 of Code of Civil Procedure can be exercised by the Court either suo moto or on application of party in order to clarify matters which may have remained ambiguous.

3. Upon due consideration of aforesaid contentions and perusal of the record, according to me, no case whatsoever is made out to interfere with the impugned order.

4. In this case, the execution proceeding are pending since last eight years as observed by the learned executing Court in the impugned order. Further, the Court Commissioner was duly examined as also cross examined. In the application seeking recall of this witness there is absolutely no explanation as to why the questions, which the Petitioner now seeks to pose to the Court Commissioner were not posed. It is obvious that this Application was taken out to only delay the execution proceeding which have

been pending since last 8 years. There does not appear to be in ambiguity as such in the deposition of the Court Commissioner. In any case, there does not seem to be any confusion in the mind of executing Court in regard to the description and identification of the property. In such circumstance, it is really not for the judgment debtor to insist upon the Court exercising its powers under the Order 18 Rule 17 of Code of Civil Procedure.

5. The decision in the case of **K.K.Velusamy** (supra) rather than assisting to the Petitioners, in fact, is contrary to the contentions raised by and on behalf of the Petitioners. In this case, the Hon'ble Apex Court has clearly held that Order 18 Rule 17 of the Code enables the Court, at any stage of a suit, to recall any witness who has been examined and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. *The Supreme Court has clearly held that, the power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is*

not intended to be used to fill up omissions in the evidence of a witness who has already been examined. [Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate - 2009 (4) SCC 410].

6. The Supreme Court further held that, Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in- chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

7. The present case, it is clear that the Petitioners seek to pose further questions or bring on record further material by way of recall of examination of Court Commissioner. Such a course of action as held by Hon'ble Supreme Court is not available to the

parties by resort to provision of Order 18 Rule 17 of Code of Civil Procedure.

8. Accordingly, there is no merit in this Petition, which is required to be dismissed.

9. This Petition is accordingly dismissed with cost of Rs. 5,000/-.

10. Learned executing Court is directed to dispose of the execution proceeding as expeditiously as possible and in any case within a period of three months from today.

11. The Petitioners are directed to place the authenticated copy of this order before the learned executing Court on 19th March, 2019 and to pay the cost of rs. 5000/- to the decree holder on the said date.

(M. S. SONAK, J.)