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

**CM No.8073-CII of 2019 in/and
Civil Revision No.3381 of 2018 (O&M)
Date of Decision:11.04.2019**

**Guljinder Singh @ Gurwinder Singh Petitioner
Vs
Gurdial Singh ...Respondent**

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

Present:Mr. Kushagra Mahajan, Advocate for
Mr. P.B.S. Goraya, Advocate
for the petitioner.

Mr. S.S. Goraya, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

CM No.8073-CII of 2019

Notice of the application was issued on 08.04.2019.

Main case is fixed for 02.05.2019.

For the reasons mentioned in the application, the same is allowed. Date of hearing is preponed for today and with the concurrence of learned counsel for the parties, I have heard the arguments on merits.

Civil Revision No.3381 of 2018 (O&M)

[1]. Petitioner has assailed the order dated 26.03.2018 passed by the Civil Judge (Jr. Divn.) Jalandhar vide which the application under Order 18 Rule 17 CPC for recalling the order

dated 23.08.2017 and for recalling the plaintiff for cross-examination was dismissed.

[2]. It appears from the record that on 23.08.2017 PW-1 Gurdial Singh was present and was allegedly cross-examined by the Sh. J.S. Sandhu, Advocate for the defendant. The grievance of the petitioner was that Sh. J.S. Sandhu, Advocate was not present in Court on 23.08.2017 and treating the cross-examination of PW-1 to be nil was erroneous. Precisely for the said grievance, the petitioner approached the same Court by pleading the following facts in paras No.2 and 3 of the application:-

- “2. That the counsel of defendant was not well on the said date and therefore he was not able to appear before this Hon'ble Court.
3. That the plaintiff tendered the evidence on 14.02.2017 and then he did not appear in the Court on several dates. Even the cross examination was not able to conduct due continues absence of the plaintiff before this Hon'ble Court. The counsel for defendant was in apprehension that the plaintiff would not appear on 23.08.2017. The counsel for defendant was also not well on the said date, so that he did not appear before the Hon'ble Court.”

[3]. Vide order dated 31.05.2018, the case was adjourned at the instance of petitioner in order to explain as to how the presence of Mr. J.S. Sandhu, Advocate was recorded in the

order dated 23.08.2017 and cross-examination of PW-1 Gurdial Singh was shown to be complete.

[4]. It appears from the record that on 23.08.2017, PW-1 Gurdial Singh was recalled for cross-examination. Liberty was given to the defendant and the same was treated to be nil. The order dated 23.08.2017, shows that PW-1 Gurdial Singh was present and cross-examined and the case was adjourned for 12.09.2017 for remaining PW's. There is some ambiguity in recording the order dated 23.08.2017.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. The provision in terms of Order 18 Rule 17 CPC has to be exercised sparingly that too in exceptional circumstances. The provision can be used as per convenience of the Court and none of the parties is entitled to file the said application. Even though the application was filed by the petitioner, but in view of facts apparent on record, I deem it appropriate to exercise the jurisdiction under Order 18 Rule 17 CPC by following the observation made by the Hon'ble Apex Court in **K.K. Velusamy vs. N. Palanisamy, (2011) 11 SCC 275** and **Ratti Ram vs. Mange Ram (D) through LRs and others, 2016(2) R.C.R. (Civil) 464.**

[7]. In view of aforesaid material on record, the filing of application by the petitioner before the same Court was justified. The trial Court ought to have granted one opportunity to the defendant to cross-examine PW-1 Gurdial Singh. There is some omission on the part of the petitioner as well for that the respondent can be compensated with adequate costs.

[8]. For the reasons recorded above, I deem it appropriate to set aside the impugned order dated 26.03.2018 passed by the Civil Judge (Jr. Divn.) Jalandhar and allow one opportunity to be given to the petitioner to cross-examine PW-1 Gurdial Singh on a date to be fixed by the trial Court within 15 days from today. Learned counsel for the respondent undertakes to produce PW-1 on the date to be fixed by the trial Court. On that day, the defendant/petitioner shall cross-examine the witness.

[9]. In view of above, this revision petition is allowed, however subject to payment of costs of Rs.15,000/- to be paid to the plaintiff. However, payment of costs shall be the condition precedent for granting the indulgence by the trial Court in the aforesaid context.

April 11, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No