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

CR No. 1157 of 2019
Date of Decision: 20.02.2019

Kamini and others

-Petitioners

Vs

Azad Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Jain, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

Petitioners have challenged the order dated 20.11.2018 passed by Additional Civil Judge (Senior Division), Gurugram vide which application filed by the petitioners for re-calling of PW1 for further cross-examination was dismissed. Petitioners have also assailed the order dated 10.01.2019 passed by the said Court in the review application vide which review application was not entertained.

Perusal of the record would show that plaintiff was cross-examined by Mr. Shyamvir Singh, Advocate for the defendants even on his re-call on 05.11.2014.

An application for re-call of PW1 was filed with the change of counsel on the ground that though the witness was

cross-examined by the earlier counsel but certain questions were left to be put to the witness and the witness was not cross-examined properly on various important points and the previous counsel has only made suggestion in the whole cross-examination.

With this plea, the witness was sought to be re-called for further cross-examination by engaging a new counsel.

In Om Parkash versus Vinod Kumar, 2014 (Supplementary) Civil Court Cases 485 (P&H) and State of Haryana versus Raj Mehar and others, 2016(5) Recent Apex Judgments 109, it was held that the party cannot be allowed to re-call a witness for further cross-examination with the change of counsel. PW1 had already been cross-examined by the earlier counsel in detail.

Powers under Order 18 Rule 17 CPC can only be exercised by the Court according to its convenience. The Court at any stage 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 any witness or to fill lacuna in the case.

In view of ratio of K.K. Velusamy vs N. Palanisamy, (2011) 11 SCC 275 and Ratti Ram vs Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464, powers can only be

exercised by the Court according to its convenience and the party to the litigation cannot invoke the said provision in terms of Order 18 Rule 17 CPC.

The principle as 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 aforesaid subject.

For the reasons recorded hereinabove, I do not see any justification to interfere in this revision petition.

This revision petition is accordingly, dismissed.

20.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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