

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

**CR No.2919 of 2019(O&M)
Date of Decision: 06.05.2019**

M/s Goyal Automotive Pvt. Ltd.Petitioner

Versus

Kamaljit SinghRespondent

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

Present:Mr. Naveen Bawa, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 15.03.2019 passed by Civil Judge (Junior Division), Ludhiana vide which request of the petitioner for directing the respondent to produce some documents for proper adjudication of the case was rejected.

[2]. Perusal of the record would show that the plaintiff/petitioner filed a suit for recovery of Rs.1,95,243/- along with interest as shown in the headnote of the plaint. Both the

parties went to trial on definite issues. Petitioner has already concluded its evidence. In defendant's evidence, DW 1 Kamaljit Singh was recalled for cross-examination by the learned counsel for the plaintiff. On the basis of disclosure of some incriminating facts in the cross-examination of DW 1 Kamaljit Singh, learned counsel for the plaintiff requested the trial Court to direct the respondent to bring some documents for cross-examination of the witness. The documents sought to be produced are as under:-

- (i) The original invoice in the possession of witness.
- (ii) The clearance letter from the financed bank Kotak Mahindra Prime of the said vehicle.
- (iii) Service record of the services done of the vehicle in dispute from the agency from which the vehicle was purchased.
- (iv) Service note book in the possession of the witness as alleged by him in the cross-examination.
- (v) The insurance policies of the said case for the year 2015-16, 2016-17, 2017-18 and 2018-19.

[3]. Perusal of the plaint in terms of para Nos.3, 4, 5 and 6 would show that no such foundation was made in the pleadings on which documents are sought to be put to DW 1 Kamaljit Singh in his cross-examination. In a way, plaintiff/petitioner

sought to lead evidence in respect of aforesaid documents which were never sought to be produced in any application for production of documents at the relevant stage. Plaintiff has not made foundation for leading such evidence. The evidence without pleadings would be far-fetched relief. No application has been filed for production of documents, nor any such pleading has come forth for production of these documents except the request made by learned counsel for the plaintiff before the trial Court at the time of cross-examination of DW 1 Kamaljit Singh. In a suit for recovery, the documents forming part of the request are not relevant for adjudication of the *lis* on merits.

[4]. Power under Order 18 Rule 17 CPC can only be invoked as per convenience of the Court i.e. to enable the Court to clarify any issue or doubt. It may have in respect of evidence led by the parties by re-calling any witness so that the Court itself can put questions to such witness and elicit answers. However, this power under Order 18 Rule 17 CPC is not intended to be used to fill omission in evidence of a witness who has already been examined.

[5]. The ratio of **K.K. Velusamy vs N. Palanisamy, (2011) 11 SCC 275** can be relied. Power under Order 18 Rule 17 CPC has to be exercised sparingly that too under exceptional circumstances. Though the Court at any stage of the suit 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 a witness or to fill lacuna in the case. The language used in the aforesaid provision is limited to the extent of convenience of the Court, where Court requires such evidence to be led. The assistance of the Court for exercise of its inherent power under Section 151 CPC cannot be utilized to fill lacuna in evidence. The inherent power is not to be exercised in a manner which will be in conflict with the provision under Order 18 Rule 17 CPC.

[6]. The ratio laid down by Hon'ble Apex Court in **Ratti Ram vs Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464** can be relied to say that the aforesaid ratio has embarked upon the controversy of such type where the Hon'ble Apex Court has ruled that recalling of witness for further elaboration on left out points is wholly impermissible in law. The purpose of provision in terms of Order 18 Rule 17 CPC is very limited and is discretionary in nature and the same can be invoked for the convenience of the Court.

[7]. In the instant case, no indulgence can be granted, particularly in view of pleadings made in the plaint, where no foundation was made by the plaintiff/petitioner for leading such an evidence that too in the cross-examination of DW 1 Kamaljit

Singh. Plaintiff/petitioner has already closed its evidence.

[8]. In view of above, no indulgence can be granted in favour of the plaintiff/petitioner. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

06.05.2019

Prince

Whether reasoned/speaking
Whether reportable

(RAJ MOHAN SINGH)

JUDGE

Yes/No
Yes/No