

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

112

**CR No.4303 of 2019
Date of Decision:16.7.2019**

Ashok Sharma

.....Petitioner

Versus

Union of India and others

....Respondent

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

Present: Mr.Paras Money Goyal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has preferred this revision petition against the order dated 20.5.2019 passed by Civil Judge (Junior Division), Chandigarh, vide which the application filed by the petitioner for re-calling the witness namely Sudesh Sharma for further cross-examination was dismissed.

Affidavit of Sudesh Sharma in her examination-in-chief was tendered on 6.3.2018. Three other witnesses, namely, Monika Sharma, Neeraj Kaushal, Deepika Sharma also tendered their affidavits in their examination-in-chief on 16.4.2018. The case was adjourned for cross-examination of aforesaid witnesses for 7.8.2018. On the date fixed, cross-examination of Sudesh Sharma was done by the plaintiff, but

the remaining witnesses, namely, Monika Sharma, Neeraj Kaushal, Deepika Sharma did not turn up and the defendants even closed their evidence without getting the aforesaid witnesses cross-examined by the plaintiff.

The application in question was filed by the plaintiff without mentioning the exact provision of law, but during the course of arguments, learned counsel for the petitioner submitted that the application was in fact under Order 18 Rule 17 CPC for further cross-examination of Sudesh Sharma by the plaintiff as learned counsel for the plaintiff could not put relevant questions to the witness on account of absence of the other witnesses, who despite filing their affidavits in examination-in-chief did not turn up for cross-examination. The trial Court dismissed the application.

Even during the course of arguments before this Court, learned counsel for the petitioner could not explain as to why the relevant questions which were sought to be put to the witness, were not brought for consideration before the trial Court. The cross-examination of Monika Sharma, Neeraj Kaushal, Deepika Sharma could not have facilitated learned counsel for the petitioner to put any such question to Sudesh Sharma. Even on the basis of right to lead evidence at first point of time, this Court cannot draw any conjecture on the

premise that the cross-examination of Sudesh Sharma could have been adjourned beyond the date of cross-examinations of the witnesses, namely, Monika Sharma, Neeraj Kaushal, Deepika Sharma. In para No.4 of the impugned order, some recital has been made by the trial Court that the prayer of the petitioner is in the context of recalling the witnesses, namely, Monika Sharma, Neeraj Kaushal, Deepika Sharma for cross-examination and Sudesh Sharma for further cross-examination. It is worth noting that if cross-examinations of the aforesaid witnesses could not be done on account of their absence, the Court would be at liberty to draw legal inference against the party concerned. Non examination of the aforesaid witnesses cannot provide any such course of action in favour of the plaintiff. So far as Sudesh Sharma is concerned, her further cross-examination even with the aid of the application under Order 18 Rule 17 CPC cannot be granted as the aforesaid provision is merely an enabling provision for the convenience of the Court and the same cannot be used by the parties to re-examine any witness nor to fill lacuna in the case. Powers under the aforesaid provision have to be exercised very sparingly that too under exceptional circumstances. The language of Order 18 Rule 17 CPC is limited to the extent of convenience of the Court, where the Court requires such

evidence to be led.

In **Surinder Kaur vs Karanbir Singh, 2004(3) RCR (Civil) 161** and **Ratti Ram vs Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464**, the scope of the aforesaid provision has been explained and it has been held that the aforesaid provision has been categorized to be of limited scope and the powers of the Court can only be exercised by the Court itself and not at the instance of any of the litigating party.

Even otherwise, the case has reached the stage of final arguments. Sudesh Sharma has already been cross-examined by the plaintiff-petitioner. At the stage of final arguments, the petitioner cannot be permitted to re-open the case by seeking further cross-examination of Sudesh Sharma.

In view of above, this revision petition is found to be devoid of merits and is dismissed as such.

July 16, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No