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

CR No. 5243 of 2019

Date of Decision: 30.08.2019

Neeraj Jindal

-Petitioner

Vs

Manju

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harsh Goyal, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner seeks to challenge the order dated 05.08.2019 passed by Additional Civil Judge (Senior Division), Barnala vide which prayer for re-calling of plaintiff PW1 for further cross-examination was dismissed.

Plaintiff-PW1 was cross-examined by the defendant on 15.02.2016. Evidence of the plaintiff was closed. Thereafter, evidence of the defendant started. Defendant has also concluded her evidence on 26.02.2019.

After expiry of three years from the date of recording statement of PW1, present application came to be filed on the ground that earlier counsel could not extract material information in respect of financial resources available with the plaintiff.

Petitioner prays for one opportunity for further cross-examination of PW1.

Perusal of the record would show that PW1 was fully cross-examined on 15.02.2016. Thereafter, defendant-petitioner availed numerous opportunities firstly to conclude her evidence on 26.02.2019 and thereafter for arguing the case on merits.

The present application came to be filed at a very belated stage that too with the change of earlier counsel.

In view of **Om Parkash versus Vinod Kumar, 2014 (Supplementary) Civil Court Cases 485 (P&H)** and **State of Haryana versus Ram Mehar and others, 2016(5) Recent Apex Judgments 109**, it was held that a 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. Even otherwise, process of the Court in terms of Order 18 Rule 17 CPC cannot be invoked by the private party as the aforesaid provision is meant only for convenience of the Court. 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 laid down by 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) RCR (Civil) 464,** powers under Order 18 Rule 17 CPC can only be exercised by the Court according to its convenience and the party to the litigation cannot invoke the said provision.

The aforesaid principle was also reiterated in **Vadiraj Nagappa Vemekar vs Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410.**

For the reasons recorded hereinabove, I do not see any justification to interfere in the impugned order which is not found to be suffering from any error of jurisdiction.

This revision petition is accordingly, dismissed.

30.08.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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