

119

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

**Civil Revision No.251 of 2019
Date of Decision: 16.01.2019**

VINESH AND OTHERS

.....Petitioners

Vs

RAJESH AND ORS

....Respondents

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

Present: Mr. Sudesh K. Khurcha, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (Oral)

[1]. This revision petition has been preferred against the order dated 05.12.2018 passed by the Addl. Civil Judge (Sr. Divn.) Chandigarh, whereby the application filed by the petitioner under Order 18 Rule 17 read with Section 151 CPC was dismissed.

[2]. Brief facts are that the issues were framed on 23.05.2016. Evidence of the plaintiff was closed on 25.05.2018. Thereafter six opportunities were availed by the respondents/ petitioners for leading their evidence despite two last opportunities on 14.09.2018 and 27.09.2018. The evidence of the respondents No.2 to 7/petitioners was closed by order of the Court on 27.09.2018 after noticing the fact that RW-2 was present and cross-examined and no other witness of

respondents No.2, 3 to 7 was present on 27.09.2018. The case was pending for evidence of the respondents since 25.05.2018 and since then several opportunities were availed by the petitioners/respondents to adduce their evidence including last opportunity. The said order dated 27.09.2018 has not been challenged by the petitioners in any forum. In view of **Chand Singh vs Naranjan Singh, 1990(1) SimLJ 292**, if the order closing the evidence of the party is not challenged by way of filing any revision petition, no prosecution of any application for additional evidence can be filed.

[3]. The scope of application under Order 18 Rule 17 CPC can be summed up in view of ratio of judgment of **Surinder Kaur vs. Karanbir Singh 2004 (3) RCR (Civil) 161**, wherein this Court held that the provisions in terms of Order 18 Rule 17 CPC 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 in order to fill lacuna in the case. The provision has to be exercised sparingly that too in exceptional circumstances. Though, the Court may at any stage of the suit recall any witness, who has been examined and may put such questions to him as the Court thinks fit, but the said provision does not permit a party to re-examine any witness to fill lacuna in the case. 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. The assistance of the Court for exercise of its inherent power under Section 151 CPC cannot be utilised in the aforesaid context. The inherent power is not to be exercised in a manner which will be in conflict with the procedure expressly provided in the Code.

[4]. The Hon'ble Apex Court in **Ram Rati vs. Mange Ram (D) through LRS. and others 2016 (2) RCR (Civil) 464** has embarked upon the controversy of such type where the Hon'ble Apex Court has ruled that recalling of witness for further elaboration on the left out points is wholly impermissible in law under Order 18 Rule 17 CPC at the instance of the parties. The purpose of the provision in terms of Order 18 Rule 17 CPC is very limited and is discretionary in nature. This provision can be invoked for the convenience of the Court where the Court requires such evidence to be led.

[5]. In view of aforesaid, no indulgence can be granted in this revision petition and the same is accordingly dismissed.

January 16, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No