

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

CR No.626 of 2020(O&M)

Date of decision: 20.2.2020

Surjit Singh

.....Petitioner

VERSUS

Sharanjit Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Navkesh Singh, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

CM No.3613-CII of 2020

Heard.

Allowed as prayed for.

Annexure P-4 is taken on record.

Disposed of accordingly.

CR No.626 of 2020

Challenge in the present petition has been directed against order dated 16.09.2019 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Payal, Ludhiana whereby application under Order 18 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for recalling Sharanjit Kaur for further cross examination has been dismissed.

Perusal of application (Annexure P-4) reveals that reasons for recall of Sharanjit Kaur for further cross examination are contained in para 2 and 3 of the application. A relevant extract from para 2 reads as follows:-

“2... In fact, the defendant has never borrowed any money from the plaintiff as alleged in the plaint/affidavit of the

plaintiff/witness and further the plaintiff/witness Sharanjit Kaur is only house wife and has no income source and thus she is not in paying capacity of such a huge amount as lend to the defendant. But in the cross examination, eminent questions regarding this dispute could not be put by the previous counsel of the defendant, nor any document has been put to the plaintiff/witness in her cross examination. The applicant wants to put certain questions to the plaintiff/witness in regard to the paying capacity of the plaintiff and also wants to put certain documents to the plaintiff/witness, as the plaintiff has intentionally failed to produce such documents.”

In para 3, there is reference that now the applicant has engaged another counsel and came to know about significance of the question sought to be put to the plaintiff by recalling her for further cross examination.

Counsel for the petitioner would argue that since petitioner/defendant has denied execution of pronote and receipt as well as taking loan of Rs.14,15,500/-, capacity of the respondent/plaintiff to pay such a huge amount assumes significance and she is required to be cross examined on this vital aspect of the matter. It is further argued that the respondent/plaintiff did not produce any documentary evidence in respect of sale of land by her husband. The last submission made by counsel is that a serious prejudice shall be caused to the petitioner in case the respondent/plaintiff is not recalled for further cross examination in respect of the aforesaid aspects of the matter.

Rule 17 of Order 18 CPC deals with power of the Court to recall and examine witness. It says that the Court may at any stage of a

suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Hon'ble the Supreme Court in **K.K. Velusamy Vs. N. Palanisamy, 2011 (11) SCC 275** has held that power under Order 18 Rule 17 CPC is only to enable the Court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. However, this power under Order 18 Rule 17 is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

Perusal of cross examination of Sharanjit Kaur (Annexure P-3) reveals that she was confronted with her capacity to pay the loan amount to the petitioner/defendant and answers given by her are duly recorded in her cross examination. If the previous counsel did not call upon the respondent/plaintiff to produce the sale deed of land, if any, sold by her husband that does not constitute a ground for recall of the witness merely because the present counsel has given an advice that the same was necessary. In this view of the matter, I do not find an error in the order impugned warranting intervention.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

FEBRUARY 20, 2020

'D. Gulati'

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no