

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

CR-2095-2021 (O&M)

CM-9303-CII-2021

Date of Decision: 24.09.2021

SUKHDEV SINGH

...Petitioner

Versus

MANN SINGH ALIAS GURNAM SINGH (DECEASED) THR. LRS.

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Varinder Kumar Sandhir, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Grievance of the petitioner, herein, is against an order dated 23.08.2021 passed by learned Civil Judge (Junior Division), Amritsar, whereby, an application moved by respondent-defendants for re-examination of their own witness/DW-4 has been allowed. Petitioner is aggrieved that the same has been allowed after the completion of cross-examination of DW-4 which was carried out on deferred dates and any further opportunity to re-examine the same witness would be sheer wastage of time.

2. Having heard the arguments of learned counsel for the petitioner, no grounds to interfere are made out.

3. The re-examination of the witness can be carried out by the trial Court on its own discretion at any stage of the trial, as is borne out from Order 18, Rule 17 of the Code of Civil Procedure, which is reproduced here-in-below :-

“ 17. Court may recall and examine witness.- 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.”

4. Though the grievance herein is that it is not the Court which has summoned the witness on its own, but it is on an application filed by the defendants, who had ample opportunity to examine the witness since his examination and cross-examination was carried out on deferred dates i.e. 07.02.2019 and 15.02.2020 before his examination was finally closed.

5. Learned counsel for the petitioner submits that it is an afterthought to improve the statement of DW-4 which has already been recorded and closed and the defendant cannot be allowed to improve his case at this stage.

6. Be that as it may, the procedures prescribed in law are handmaid of justice. As already observed that the conceded position being that the trial Court is at liberty to summon the witness at any stage of the trial, therefore, it is not really very relevant whether the same has been done on an application moved by the defendants or not, since admittedly, the trial Court in its wisdom is the best judge to decide whether the witness is required to be re-summoned for asking any questions either at the instance of the Court or otherwise on an application moved by the litigant.

7. Learned counsel for the petitioner relies on a judgment of this Court rendered in **M/s Maple Logistics Pvt. Ltd. Vs M/s Riba Textile Pvt. Ltd. & Ors. 2017(3) Law Herald 2201**. The relevant portion of the judgment is reproduced hereunder :-

*“Hon’ble Apex Court in **Ram Rati v. Mange Ram (D) through LRs and others, 2016(2) RCR (Civil) 464**, has embarked upon the controversy and ruled that recalling of the witness for further elaboration on the left out issues is wholly impermissible in law. The purpose of Order 18, Rule 17 CPC is very limited and is discretionary in nature. This provision can only be invoked by the Court for its convenience and not on the asking of any party.”*

8. Import of the judgment *ibid* is that in case trial Court is to use its discretion to summon a witness for re-examination on an application,

then it must first apply its mind on the reasons given thereof and purpose of the re summoning should not be any further elaboration on the left out issues.

9. In the instant case, in the application seeking to re-summon the witness, it has been specifically stated that during the cross-examination of DW-4, the applicant-defendant had requested the re-examination of the said witness and the trial Court observed that the same shall be allowed only if an application qua the same is moved. Pursuant thereto, an application was filed and it has been stated therein that the controversy to explain the contents of Form-J qua Exhibits P-11 and P-12 (Enquiry Issuance Receipts) requires that the aforesaid DW (Auction Clerk of Market Committee) is re-summoned for examination. During the earlier examination of the said Auction Clerk, on a specific question put to him, he stated that he had not brought the aforesaid Form 'J', despite its summoning. However, during the cross-examination, he resiled from the above statement and stated that the Form 'J' register had been brought by him. Implicitly meaning that despite his having brought the same, his statement qua the same was not recorded. In the premise, the said Clerk, during his cross-examination, remained silent regarding the authenticity of the Form 'J'.

10. Be that as it may, as already observed, it is entirely for the trial Court to have used its discretion for permitting the re-examination of the aforesaid DW-4. It seems to have decided so, after having gone through the reasons given in the application, which appear to be cogent enough for coming to the conclusion of permitting re-examination by re-summoning.

11. In the parting, however, it is made clear that during the re-examination, the questions to be put to DW-4 shall be confined to the

reasons given in the application for re-summoning him and no other question beyond the same shall be permitted to be asked.

12. Disposed of.

September 24, 2021

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No