

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

122

CR No.1648 of 2022

Date of Decision : 01.12.2022

Siraj Din

....Petitioner

VERSUS

Mohd. Khalil

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajit Kumar Sharma, Advocate for
Mr. Imran Farooqi, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 04.04.2022 whereby the application filed by the petitioner for re-calling the witness, namely, Mohd. Khalil (plaintiff-respondent herein) has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for recovery of Rs.84,050/- against the defendant-petitioner. It is the case set up by the defendant-petitioner that he was never served any notice or summon and an *ex parte* judgment and decree dated 25.03.2013 came to be passed against the defendant-petitioner. On learning about passing of the *ex parte* judgment and decree, an application under Order IX Rule 13 read with Section 151 CPC was filed for setting aside the *ex parte* judgment and decree dated 25.03.2013. In the proceedings under Order IX Rule 13 CPC, the plaintiff-respondent was examined-in-chief on 18.11.2021 and on the same date he tendered documents Ex.R-10 to Ex.R-18. On 18.11.2021, the cross-examination of RW-1 Mohd. Khalil, was deferred on the request of counsel for the defendant-petitioner. On 14.12.2021, RW-1 Mohd. Khalil, was completely cross-examined by

counsel for the defendant-petitioner and thereafter, the plaintiff-respondent closed his oral evidence on the same date. Thereafter, an application was filed under Section 151 CPC on 04.04.2022 for recall of the witness, Mohd. Khalil, on the ground that the counsel did not cross-examine the witness on documents mentioned in examination-in-chief as Ex.R-10 to Ex.R-18. The said application was dismissed vide the impugned order dated 04.04.2022.

Learned counsel for the defendant-petitioner would contend that earlier counsel did not cross-examine the witness *qua* the documents Ex.R-10 to Ex.R-18 and, hence, it was necessary to recall the witness for further cross-examination.

Heard.

In the present case the witness, RW-1 Mohd. Khalil, was examined in chief on 18.11.2021. On the said date his cross-examination was deferred on the request of counsel for the defendant-petitioner. Thereafter, on 14.12.2021, the said witness was completely cross-examined and the oral evidence was closed by the plaintiff-respondent. Having availed his opportunity to cross-examine the witness, an application was thereafter filed for recalling the said witness. Learned counsel for the defendant-petitioner is unable to show as to under what provision of law the said witness could have been re-called for further cross-examination when he was completely cross-examined by counsel for the defendant-petitioner. The defendant-petitioner cannot be permitted to recall the witness for filling in the lacuna in his evidence. The application filed by the defendant-petitioner is nothing but a total misuse and abuse of process of law.

In view of the above, I do not find any illegality and infirmity in the impugned order. The present revision petition, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.12.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO