

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

CR-3260-2019 (O&M)

Date of decision : 20.12.2022

Suresh Kumar Yadav and Another ... Petitioner(s)

Versus

Seema Yadav ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Viren Jain, Advocate and
Mr. Raj Shekhar, Advocate for the petitioners.

Mr. Amit Jain, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed challenging the impugned order dated 06.04.2019 (Annexure P-10) whereby the application filed by the defendant-petitioners for recalling the plaintiff-respondent for further cross-examination has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for permanent as well as mandatory injunction. The plaintiff-respondent filed her affidavit in evidence and thereafter was cross-examined on 22.11.2016 by the counsel for the defendant-petitioners. Subsequently, on 28.01.2019, an application was filed by the defendant-petitioners, at the stage of defence evidence, for recalling the plaintiff-respondent for further cross-examination on the ground that the defendant-

petitioner No.1 himself is a practicing lawyer at this Court and hence he could not go to Gurgaon at the time of the cross-examination. It is to be noted that detailed cross-examination of the said witness i.e. plaintiff-respondent was conducted on 22.11.2016. The said application was dismissed vide the impugned order dated 06.04.2019. Hence, the present revision petition.

Learned counsel for the defendant-petitioners would contend that certain material questions which were required to be put to the said witness (PW1) were not put at the time of the cross-examination and hence it was necessary to recall the said witness under the provisions of Order 18 Rule 17 of the Code of Civil Procedure, 1908 (CPC).

Per contra, learned counsel for the plaintiff-respondent would contend that the present application is an abuse of the process of law and that cross-examination of PW1 was completed on 22.11.2016. However, the present application was moved on 28.01.2019. Even the application is totally bereft of any reasoning or details as to what questions were left to be put to the witness. In support of his contentions, learned counsel for the plaintiff-respondent has relied upon the judgment in the case of **Ram Rati Vs. Mange Ram (D) Thr Lrs. & Ors. [2016 (2) RCR (Civil) 464]**.

Heard.

In the present case, the plaintiff-respondent was cross-examined in detail on 22.11.2016 as is apparent from a perusal of the file, wherein the cross-examination of the said witness (PW1) has been appended. On 28.01.2019 the present application was moved for recalling the plaintiff-respondent for further cross-examination only on the ground that the

defendant-petitioner No.1 who was a practicing Advocate at this Court could not reach Gurgaon and hence in the absence of necessary instructions, vital questions which were required to be put to the plaintiff-respondent could not be put. The present application is nothing but an endeavour to fill in the lacuna in the evidence of the defendant-petitioners.

Hon'ble Supreme Court in the case of **Ram Rati** (supra), after considering the various judgments, has held as under :

“12. In Vadiraj Naggappa Vernekar (Dead) Through LRs. v. Sharadchandra Prabhakar Gogate 2009(2) RCR (Civil) 508 : (2009) 4 SCC 410, this principle has been summarised at paragraphs- 25, 28 and 29:

“25. In our view, though the provisions of Order 18, Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

xxx

28. The power under the provisions of Order 18, Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely

on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18, Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18, Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

13. In K.K. Velusamy v. N. Palanisamy 2011(2) RCR (Civil) 875 : 2011(3) Recent Apex Judgments (R.A.J.) 83 : (2011) 11 SCC 275, the principles enunciated in Vadiraj (supra) have been followed, holding at paragraphs 9 and 10:

“9. Order 18, Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18, Rule 17 can be exercised by the court either on its own motion or

on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate.)

10. Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18, Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, 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.”

18. The settled legal position under Order 18, Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.”

It is trite that the main purpose of Order 18 Rule 17 CPC is to enable the Court to clarify any doubt which it may have with regard to the evidence led by the parties, however, the said provisions cannot be used to fill omissions in the evidence of a witness who already stands examined in detail.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

20.12.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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