

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

CR-4575-2022

Date of decision : 15.11.2022

Sucha Singh

...Petitioner

Vs.

Nachhattar Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Surjit Singh Swaich, Advocate and
Mr. Gurwinder Singh, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner (defendant No.1) is aggrieved against the order dated 21.09.2022 (Anenxure P-6) passed by Additional District Judge, Ludhiana in civil appeal No.779-2014, whereby his application for recalling the plaintiff-Nachhattar Singh (PW-1) for further cross-examination at the appellate stage was declined.

Learned counsel has argued that the suit filed by plaintiff-Nachhattar Singh seeking permanent injunction against defendant(s)/respondent was decreed on 01.07.2014 and the said decree was upheld by the first Appellate Court on 07.11.2015.

Learned counsel has drawn the attention of the Court to the order dated 27.08.2019 (Annexure P-3) passed by this Court in RSA No.2477-2016 arising from the judgment and decree dated 07.11.2015, and submitted that the appeal was remanded back before the first appellate Court for deciding it afresh. He submits that at that stage, the application filed by the appellant under Order 41 Rule 27 CPC for adducing additional evidence was also

withdrawn, but without prejudice to appellant's right to avail this remedy before the first appellate Court. Mr. Swaich, learned counsel submits that the application for additional evidence was also allowed by the first appellate Court and pursuant to that, site plan was adduced in evidence by the defendant-Sucha Singh and later an application was moved by the him under Order 18 Rule 17 CPC seeking recalling of plaintiff-Nachhattar Singh for further cross-examination as during his cross-examination conducted on 01.03.2012, few important questions were not put to him, but the Court has erroneously dismissed his application. He prays that the impugned order be set aside.

During the course of the hearing, it is not disputed by learned counsel that this Court, vide order dated 27.08.2019 had only remanded the appeal back to the first appellate Court for deciding it afresh as the impugned judgment and decree passed by the first appellate Court had not dealt with the arguments raised by the defendant/appellant, and at that stage, no prayer for further cross-examination of plaintiff was made. He fairly states that even at the stage of seeking permission to adduce additional evidence, no prayer in this regard was made, and the application under Order 18 Rule 17 CPC was filed subsequently after the change of counsel.

After hearing learned counsel and considering the above background, this Court finds that once the cross examination of plaintiff stood concluded during trial Court, whereupon the judgment and decree stands passed, and subsequent remedies availed by the defendant are in the nature of appeal, therefore, the prayer seeking recalling of the plaintiff as witness for further cross-examination is mis-conceived. Apart from it, mere change of

counsel cannot be construed as a valid ground to further cross-examine witness.

A perusal of the impugned order shows that the first appellate Court has examined the background of the case carefully while rejecting petitioners's application and it does not suffer from any illegality or impropriety.

Thus, no interference is called for by invoking the superintendence powers under Article 227 Constitution of India.

Dismissed.

(MANOJ BAJAJ)
JUDGE

15.11.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No