

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

Civil Revision No. 415 of 2021(O&M)

Date of Decision: 26.07.2023

Tajinder Kaur @ Tejinder Kaur

...Petitioner

Versus

Mohinder Singh

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Neeraj Jain, Advocate
For the petitioner.**

**Mr. J.S. Dadwal, Advocate
For the respondent.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioner/ plaintiff for setting aside order dated 10.02.2021 (Annexure P-6) passed by the Court of Learned Civil Judge(Jr.Divn.), Ludhiana whereby the application filed by respondent/ defendant for recalling order dated 04.12.2019 vide which the evidence of respondent was closed, is allowed.

2. The counsel for the petitioner submits that the evidence of respondent was closed by the learned trial Court in presence of counsel for both the parties vide order dated 04.12.2019 (Annexure P-5). At that time no objection was raised by counsel for the respondent/ defendant and the case was adjourned to 09.01.2020 for rebuttal evidence, if any, otherwise for arguments. That thereafter the application for recalling of said order was filed by the respondent and the same was allowed vide impugned order. The counsel for the petitioner further submits that the learned trial Court was having no jurisdiction to recall its own order dated 04.12.2019 (Annexure P-

5). That there is no such provision in Civil Procedure Code which empowers the Court to recall its own previous order. The counsel for the petitioner further submits that in his application for recall of order, respondent took false plea that the said order was passed in absence of his counsel, whereas from Annexure P-5 it is evident that both the counsel were present when the said order was passed by the learned trial Court on 04.12.2019.

3. The counsel appearing on behalf of respondent submits that there is no illegality in the impugned order and the same was passed by the learned trial Court in accordance with law. So, prayer is made that the present petition be dismissed.

4. I have considered the submissions made by counsel for the parties.

5. The order dated 04.12.2019(Annexure P-5) reads as follows:-

“Today the case was fixed for defendant evidence. Defendant Mohinder Singh closed defence evidence. Now to come up for rebuttal evidence, if any, otherwise for arguments on 09.01.2020.”

6. From the perusal of the impugned order, it is evident that respondent Mahender Singh was examined in chief and was also partly cross examined, but his remaining cross examination was not concluded when order (Annexure P-5) dated 04.12.2019 was passed by the learned trial Court. It is also apparent that the learned trial Court while allowing the application for recall of order (Annexure P-5) has clarified that only one opportunity shall be granted to the party for the remaining cross examination of defendant Mahender Singh. So, it is evident that the application was allowed by the learned trial Court just for the purpose of concluding the

testimony of defendant Mahender Singh by affording one opportunity to the opposite party to further cross examine the said witness. So, this Court is of the view that the said order has been rightly passed for the cause of substantive justice, otherwise, the incomplete statement of defendant Mahender Singh could not be read into the evidence. In the absence of any specific provision, the learned trial Court is having inherent power under Section 151 CPC to recall witness for further examination/ cross examination in appropriate cases. The said inherent power is not affected by the express power conferred upon the Court under Order 18 Rule 17 CPC, to recall any witness.

7. In view of the above, the present petition is hereby dismissed being devoid of merits.

26.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No