

2023:PHHC:059398

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2406-2022 (O&M)

Date of Decision: April 13, 2023

Virender @ Virender Singh

...Petitioner

Versus

Ranbir Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sawan Chaudhary, Advocate
for the petitioner.

Mr.A.K.Jain, Advocate
for the respondents.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 06.05.2022 passed by learned Civil Judge (Jr. Divn.), whereby, an application for recalling/re-cross-examination of PW-6 Rajiv Kumar, has been dismissed.

The essential facts, as culled out from the paperbook are that, initially, respondents-plaintiffs Ranbir Singh and others has filed a suit against Virender-petitioner, for specific performance of an agreement to sell dated 27.05.2016, vis-a-vis, land measuring 24 Kanal, as detailed in the headnote of the plaint, copy whereof is Annexure P-1.

At the stage of the evidence, the plaintiffs had examined one Rajiv Kumar as PW-6 and he was also cross-examined by counsel for the

defendant-petitioner on 05.10.2019. Thereafter, on 07.02.2020, an application was filed by the petitioner-defendant, thereby, seeking recalling of the said witness Rajiv Kumar for re-cross-examination. Therein, it was stated that Rajiv Kumar could not be properly cross-examined and he is required to be re-cross-examined, as petitioner-defendant has come to know some new, important and relevant facts, which are necessary for the proper and just adjudication of the case. Also, therein, it was stated that re-cross-examination will not be prejudice to the respondents-plaintiffs, rather, it shall help the Court in arriving the just decision.

However, in reply, filed to the said application, respondents-plaintiffs had resisted the claim of the petitioner-defendant. Preliminary objection was taken with regard to the application being vague and is intended to harass the plaintiffs by making fishing inquiry and to delay the decision of the case. On merits, it was asserted that the said witness has been thoroughly cross-examined at length. The petitioner-defendant had not disclosed as to what questions remained to be asked. As such, a prayer was made for dismissal of the application.

After hearing learned counsel for the parties concerned, vide impugned order dated 06.05.2022, the aforesaid application, as such, was dismissed.

Feeling aggrieved by the aforesaid order of dismissal of the application, the petitioner-defendant has filed the present revision.

Learned counsel for the parties heard.

Learned counsel for the petitioner, at the very outset, has submitted that suit for specific performance of the agreement to sell dated

27.05.2016 was filed by the respondents-plaintiffs. However, during the pendency of the said suit, after examination of PW-6 Rajiv Kumar, who was examined on 05.10.2019, the petitioner-defendant could lay hands on certain relevant information under the RTI and thereupon, he filed the aforesaid application on 07.02.2020, copy whereof is Annexure P-2, for recalling/re-cross-examination.

It is submitted that learned Court below had erroneously dismissed the aforesaid application, while observing that the relevant facts, which were necessary for the just decision of the case, for which re-cross-examination is required, have not been disclosed. In the light of the same, now, it is submitted by learned counsel for the petitioner that there is provision for recalling and re-examination of the witness, as per Order 18 Rule 17 CPC and therefore, under the aforesaid provision, the requisite witness could be recalled. Also, it is submitted that the documents, which are essential and which are to be put to the witness, now have already been placed on record, in a sealed cover.

On the contrary, learned counsel for the respondents-plaintiffs has resisted the claim of the petitioner-defendant, as he submits that application is quite vague and nothing substantive has been pointed out, on which account, the witness is required to be recalled. It is further submitted that revision petition merits dismissal.

During the course of arguments, reference has been made to Order 18 Rule 17 CPC, which reads as herein given:-

*“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.”

From the perusal of the aforesaid provision, it is apparent that it is only the requirement of the Court that it may, at any stage of the suit, recall any witness, who had been examined earlier and put to him such questions, as it may deem fit. The said provision does not permit a party to re-examine any witness to fill up lacuna in the case, as the provision is merely an enabling provision for the convenience of the Court.

It is pertinent to mention that even though, an application for recalling/re-cross-examination of PW-6 Rajiv Kumar has been filed, but however, in the application, vague assertion has been made about necessity of re-cross-examination. It has been simply stated that the petitioner-defendant has come to know about some new, important and relevant facts, which are necessary for the proper and just adjudication of the present case. What are these facts, which have come to the notice of the petitioner-defendant, as such, has not been disclosed in the application and precisely on this account, resistance has been made in the reply to the recalling of the said witness. Even, in the impugned order, it has been rightly, so pointed out by learned lower Court that assertion, so made, for recalling of the witness, is vague, as necessary relevant facts, as such, have not been brought to the notice of the Court.

Even though, this is a position, it is pertinent to mention that as per the submissions made during the pendency of the revision petition, certain documents, on the basis whereof, the petitioner-defendant intended to re-cross-examine the witness, have been placed on record, in a sealed

cover, which has been opened in the Court, in the presence of counsel for both the parties. During the course of arguments, it is revealed that petitioner-defendant intends to re-cross-examine the witness further, with regard to his being a party or attesting witness, in various agreements to sell, executed between the plaintiffs and other persons. However, close perusal of these documents reveal that aforesaid documents relate much prior to the examination of said witness PW-6 Rajiv Kumar, when he stepped into witness box on 05.10.2019. The agreements, so coming as now put forth by the petitioner-defendant, relates to the year 2010, 2015 etc. This itself shows that these documents were already in existence, at the time, when an opportunity was granted to the petitioner-defendant, to conduct the cross-examination.

The petitioner-defendant, being litigant, was required to cross-examine the witness, on all the counts, on which, he intended to build his case, but however, at that time, without any objection or without seeking any further adjournment, exhaustive cross-examination was conducted. Precisely on this account, the recalling of the witness cannot be permitted for further cross-examination, as the same shall amount to filling lacuna of the case of the petitioner-defendant.

In view of the above discussion, the impugned order does not call for any interference. As such, present revision petition, sans merit and is hereby dismissed.

April 13, 2023
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE
Yes
Yes/No