

**CR-200-2024 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****117****CR No.200 of 2024 (O&M)****Reserved on : 27.05.2024****Date of Decision : 31.05.2024**

Neeraj Kayal

....Petitioner

Versus

Nidhi Gupta and another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Santosh Bhardwaj, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 03.10.2023 whereby the application filed by the petitioner-husband for recalling of the respondent-wife for further cross-examination has been dismissed.

2. The brief facts relevant to the present case are that the respondent-wife filed a petition under the Hindu Adoption and Maintenance Act, 1956 for grant of maintenance for herself and the minor daughter (respondent No.2 herein). The respondent-wife submitted her affidavit in evidence on 19.07.2022 and was cross-examined on 05.01.2023 on which date her evidence was closed and the matter was fixed for evidence of the petitioner-husband. On 15.04.2023 the affidavits of income, assets and expenditure were filed by both the parties and the matter was adjourned for evidence of the petitioner-husband. On the date fixed i.e. 26.07.2023 no witness of the petitioner-husband was present but an application was filed by him under Order 18 Rule 17 of the Code of Civil Procedure, 1908 for further cross-examination of the respondent-wife. It was averred in the application that the affidavit of income, assets and liabilities had only come on the

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record on 15.04.2023 and that further cross-examination of the witness was necessary as she had tried to hide essential material facts and to establish her falsehood and untruthful nature it was necessary to cross-examine her further. certain material aspects had come to the knowledge of the defendant-petitioner recently. Reply was filed to the said application. Vide the impugned order the said application was dismissed.

3. Learned counsel for the petitioner-husband would contend that after recording of the cross-examination of the respondent-wife the affidavit of income, assets and liabilities was filed by her and that she had hidden material facts which facts were never put to her in her cross-examination. It is submitted that the filing of the affidavit of income, assets and liabilities had necessitated her further cross-examination.

4. Heard.

5. In the present case the respondent-wife had submitted her affidavit in evidence on 19.07.2022 and on 05.01.2023 she was cross-examined at length by the counsel for the petitioner-husband. The application was filed after the affidavits of income, assets and expenditure were filed by the parties. By way of the present application the petitioner-husband is trying to fill in the lacunae in the case which cannot be permitted in law. Once the respondent-wife was cross-examined at length there was no question of the witness being recalled merely on the ground that certain new facts had come to the knowledge of the petitioner-husband from the affidavit of income, assets and liabilities filed by the respondent-wife.

6. Order 18 Rule 17 CPC reads as under :

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“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.”

7. Hon’ble Supreme Court in the case of **Ram Rati Vs. Mange Ram (D) Thr Lrs. & Ors. [2016 (2) RCR (Civil) 464]**, 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.

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28. The power under the provisions of Order 18, Rule 17 CPC is to be sparingly exercised and in

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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

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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.”

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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.”

8. 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.

9. In view of the above, I do not find any illegality or irregularity in the impugned order. There is no merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

31.05.2024

Ankur

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