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

CR-4189-2024 (O&M)
Date of decision: 18.10.2024

Harpreet Kaur

...Petitioner

Versus

Bhupinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chetan Sood, Legal Aid Counsel
Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 11.07.2024 (Annexure P-1) passed by the Family Court, Rupnagar in CM/441/16.10.2018 titled as “Bhupinder Singh Vs. Harpreet Kaur” vide which the application filed by the petitioner for re-examining/recalling the respondent (AW1) has been dismissed.

2. Brief facts of the present case are that the respondent-husband had filed a petition for divorce in the year 2015 and the same was dismissed in default on 10.04.2017 and the application for restoration was filed on 16.10.2018 and Bhupinder Singh-respondent had appeared as AW1 in the application for restoration and had submitted his examination-in-chief on 01.10.2019. The said AW1 was cross-examined. After having conducted the



cross-examination, an application was filed on behalf of the petitioner for recalling and re-examining the said witness-Bhupinder Singh under Section 138 of the Indian Evidence Act. The ground taken in the said application was that during the course of cross-examination, the said AW1-Bhupinder Singh had remained silent with respect to some questions which were asked to him. A reply was filed to the said application in which it was stated that the application was not maintainable and it was further stated that ample opportunities had been granted to the petitioner to cross-examine the said AW1-Bhupinder Singh and even a lengthy cross-examination was conducted. It was further stated that the application was vague and there were no material questions which were left to be put to the said AW1-Bhupinder Singh.

3. The Family Court, Rupnagar, vide order dated 11.07.2024 dismissed the said application by observing that apart from the other facts, even if a witness chooses to remain mum on some questions, the said witness cannot be called for re-examination as a witness cannot be forced to answer a question and the Court can draw adverse inference in such circumstances. It was further observed that evidence of the respondent-husband had been concluded and there was no ground to permit the petitioner to seek re-examination of the said witness.

4. Learned counsel for the petitioner has submitted that since AW1-Bhupinder Singh was silent with respect to certain questions put to him thus, the application was moved to re-examine him and it is prayed that the said application being meritorious, be allowed and the impugned order being illegal, be set aside.



5. This Court has heard learned counsel for the petitioner and has perused the paper book.

6. The application in the present case had been filed under Section 138 of the Indian Evidence Act, 1872. Section 138 of the Indian Evidence Act, 1872 is reproduced hereinbelow:-

“138. Order of examinations. - Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination. - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

7. A perusal of the above provision details the order of examination of the witness and it states that the witness shall be first examined-in-chief and in case, the opposite party so desires, then, he be called for cross-examination and thereafter, in case, the party in whose support the said witness had appeared, can re-examine him and the re-examination can only be directed by the party who had produced the said witness, for explanation of the matters referred to in the cross-examination. Furthermore, only if a new fact is introduced in the said re-examination, then with the permission of the Court, the adverse, i.e., the opposite party can further cross-examine the said witness upon the said matter. A reading



of the abovesaid provision clearly shows that the adverse party has a right to cross-examine the witness, which has been done in the present case and has no right to re-examine the said witness in case, the party in whose favour the said witness had appeared does not choose to re-examine him. In the present case, it is not in dispute that after the cross-examination, the respondent has not chosen to re-examine the said AW1-Bhupinder Singh and thus, the question of further re-examination by the adverse party, i.e., the present petitioner does not arise. Moreover, it has been rightly observed by the trial Court that merely because on certain questions, witness may have remained silent, the same could not be a ground for recalling/re-examination of the witness.

8. It would also be relevant to note that the Coordinate Bench of this Court in the case of **Neeraj Jindal Vs. Manju, Civil Revision No.5243 of 2019 decided on 30.08.2019** had observed that the provision of Order 18 Rule 17 CPC which is with respect to recalling and re-examining the witnesses, cannot be invoked by a private party as the aforesaid provision is meant only for the convenience of the Court and that the said powers can only be exercised by the Court according to its convenience and the parties to the litigation cannot invoke the same. The relevant portion of the said judgment is reproduced hereinbelow:-

“.....Even otherwise, process of the Court in terms of Order 18 Rule 17 CPC cannot be invoked by the private party as the aforesaid provision is meant only for convenience of the Court. The Court at any stage can re-call any witness who has been examined and may put such questions to him as the Court thinks fit but the said exercise does not permit a party to



reexamine any witness or to fill lacuna in the case.

*In view of ratio laid down by Hon'ble Apex Court in **K.K. Velusamy vs N. Palanisamy, (2011) 11 SCC 275 and Ratti Ram vs Mange Ram (D) through LRs and others, 2016 (2) RCR (Civil) 464**, powers under Order 18 Rule 17 CPC can only be exercised by the Court according to its convenience and the party to the litigation cannot invoke the said provision.*

*The aforesaid principle was also reiterated in **Vadiraj Nagappa Vemekar vs Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410**.*

For the reasons recorded hereinabove, I do not see any justification to interfere in the impugned order which is not found to be suffering from any error of jurisdiction.

This revision petition is accordingly, dismissed.”

9. Keeping in view the abovesaid facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

10. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

18.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No