



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

**116**

**CR-5319-2024 (O&M)  
Date of Decision: 13.09.2024**

**Municipal Council Mandi Gobindgarh and another**

....Petitioners

Versus

**Vinod Kumar Paswan and others**

....Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS SURI**

----

**Present:** Mr. Ashish Verma, Advocate  
for the petitioners.

\*\*\*\*

**VIKAS SURI, J. (Oral)**

1. Challenge in the present petition under Article 227 of the Constitution of India is to the order dated 12.07.2024 (Annexure P-6) passed by learned Civil Judge (Junior Division) Amloh, whereby the application filed by petitioner-defendant No.1 for permission to further cross-examine Vinod Kumar Paswan (plaintiff), regarding affidavit dated 04.01.2018, has been dismissed.

2. The facts of the case in brief are, plaintiff-respondent filed application/suit under Order 33 Rule 1 of the Code of Civil Procedure, 1908 (for short, 'CPC') for permission to sue the defendants as indigent persons, in a suit for recovery of Rs.10,00,000/- as damages/compensation on account of death of Kajal daughter of Shri Vinod Kumar Paswan, along with interest.

3. Upon notice of the suit, written statement was filed by defendant Nos.1 to 4 opposing the same and from the pleadings of the parties, issues were framed. The petitioner led his affirmative evidence and closed the same,

**CR-5319-2024**

-: 2 :-

whereafter the proceedings are pending for evidence of the defendants. Defendant Nos.1 and 2 (petitioners herein) moved an application for permission to further cross-examine Vinod Kumar Paswan, regarding affidavit dated 04.01.2018. Reply was filed thereto and after considering the rival submissions, the said application has been dismissed, vide order dated 12.07.2024 (Annexure P-6).

4. Feeling aggrieved by the aforesaid order of dismissal of the application, the petitioner/defendants have filed the present revision petition.

5. I have heard learned counsel for the petitioners and perused the record with his able assistance.

6. Learned counsel for the petitioners submitted that FIR No.86 dated 27.04.2017 under Section 304-A IPC was registered at Police Station Mandi Gobindgarh, at the instance of plaintiff-Vinod Kumar Paswan, regarding the same incident, which has been alleged in the plaint. It is contended that in the inquiry proceedings pursuant to the said FIR, the plaintiff had submitted an affidavit dated 04.01.2018 for cancellation of the same and the said proceedings are pending before the Court concerned. It was further contended that at the time of cross-examination of plaintiff-Vinod Kumar Paswan, the aforesaid fact was not within the knowledge of the petitioners and the plaintiff could not be cross-examined in that regard, as such. Hence, the prayer is for granting permission to further cross-examine the plaintiff with regard to affidavit dated 04.01.2018.

7. A perusal of the impugned order shows that the application, moved by petitioners, was dismissed after recording the following



observation:

“Perusal of file would reveal that case is fixed for evidence of defendants, when the present application for further cross-examination of plaintiff Vinod Kumar Paswan has been filed on the ground of affidavit. Present application has been filed at a very belated stage. At this stage, present application is not maintainable, when evidence of plaintiff has already been concluded. Moreover, plaintiff Vinod Kumar Paswan has already filed protest petition before the court on 23.05.2024. It is also pertinent to mention that application is vague as to on what contents of alleged affidavit further cross-examination of plaintiff is required. Therefore no grounds are made out to allow the present application. Therefore, application in hand stands dismissed.”

8. During the course of arguments, a reference has been made to Order 18 Rule 17 CPC, which reads thus:

**“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.”

9. From the perusal of aforesaid provision, it is apparent that it is only at the discretion 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.

10. It is not disputed that plaintiff has concluded his evidence and ample opportunity was afforded to cross-examine the plaintiff-witness. The present application seeking further cross-examination of plaintiff-Vinod Kumar Paswan, has been filed at a belated stage, when the proceedings were pending for defendants’ evidence.

**CR-5319-2024**

-: 4 :-

11. A further perusal of the impugned order shows that it has been observed that the application is vague as to the contents of alleged affidavit for which further cross-examination of the plaintiff is sought. Moreover, it is conceded that the plaintiff has already filed protest petition before the concerned Court, on 23.05.2024.

12. In view of the ratio laid down by the Hon'ble Supreme Court in ***K.K.Velusamy vs. N.Palanisamy***, (2011) 11 SCC 275 and ***Ram Rati vs. Mange Ram (Dead) through Legal Representatives and others***, (2016) 11 SCC 296, it is settled law that the power under Order 18 Rule 17 CPC can only be exercised by the Court according to its convenience and a party to the litigation cannot invoke the said provision to re-examine any witness or to fill lacuna in the case.

13. The aforesaid principle was also noticed in ***Vadiraj Naggappa Vernekar (Dead) through LRs vs. Sharadchandra Prabhakar Gogate***, (2009) 4 SCC 410.

14. In the light of above discussion, no ground has been made out warranting interference in the impugned order, and the same does not suffer from any irregularity or perversity or from any error of jurisdiction that has been pointed out.

15. Accordingly, the present revision petition is dismissed.

**September 13, 2024**  
*Varinder*

**(VIKAS SURI)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No