



CR-5396-2024

1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5396-2024

Date of decision : 18.09.2024

Sukhwinder Singh

... Petitioner

Versus

Davinder Singh and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Faninder Naman Goyal, Advocate and
Mr.Rajnish Bhardwaj, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 17.08.2024 (Annexure P-9) passed by the Civil Judge (Jr.Div.), Fatehgarh Sahib, vide which the application filed by defendant no.1-petitioner to recall the plaintiff witnesses PW-2 and PW-3 for their further cross examination has been dismissed.

2. Brief facts of the present case are that plaintiff-respondent no.1 had filed a suit for possession by way of specific performance on the basis of agreement to sell dated 10.7.2017 with respect to land measuring 8 kanal 0 marla situated at village Ghumandgarh, Tehsil Bassi Pathana, District Fatehgarh Sahib. Other prayers were also made in the suit. A written statement was filed by defendant no.1 on 15.10.2019. As is apparent from

**CR-5396-2024****2**

the impugned order dated 17.08.2024 (Annexure P-9), PW-2 Jagtar Singh was cross examined on 20.03.2023 and PW-3 Mandeep Singh was cross-examined on 20.05.2023 and thereafter even PW-4 was cross-examined on 24.07.2023. Thereafter defendant no.1-petitioner had tendered the evidence of DW-1 and DW-2 and after the trial had made much progress, defendant no.1-petitioner filed an application dated 23.05.2024 for recalling PW-2 Jagtar Singh and PW-3 Mandeep Singh. A perusal of the application would show that no specific details as to on what aspects the said witnesses were to be cross-examined, had been mentioned in the application and no provision of law under which the said application was maintainable, was mentioned. A reply dated 05.08.2024 (Annexure P-8) was filed by the plaintiff-respondent no.1 and in the said reply it was stated that the said application had been filed only to delay the proceedings and there was no provision in the CPC providing for recalling the witnesses for further cross-examination at the instance of a private party. It was also stated that the said two witnesses had already been cross-examined at length long time ago and the suit was pending since August, 2019 and the application had been filed only to harass the plaintiff. Other objections had also been taken in reply to the application.

3. The trial Court vide order dated 17.08.2024 had dismissed the said application after taking into consideration the fact that PW-2 Jagtar Singh was cross-examined on 20.03.2023 and PW-3 Mandeep Singh was cross-examined on 20.05.2023 after a gap of two months and after considering the detailed facts and also after taking into consideration the



CR-5396-2024

3

law laid down in the case of *Neeraj Jindal vs. Manju, Civil Revision no.5243 of 2019 decided on 30.08.2019, Pura Ram vs. Additional District Judge No.2 (Rajasthan)* reported as *2012(68) RCR Civil 677* and other judgments. It was observed that the application had been filed only to delay the proceedings.

4. Learned counsel for the petitioner has submitted that in the present case, the earlier counsel Sh.H.S. Cheema, Advocate, who was engaged by defendant no.1 had gone to Canada and in his absence, his junior counsel had cross-examined the said witnesses and since the petitioner was not satisfied with the cross-examination done by the said Advocate, the petitioner had changed the Advocate, who after perusing the file thoroughly, had found that the cross-examination of the said two witnesses had not been effectively carried out. It is submitted that in case the petitioner does not cross-examine the said two witnesses on material points, then it would cause prejudice to the rights of the petitioner. It is prayed that one opportunity be granted to the petitioner to recross-examine the said PW-2 and PW-3.

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

6. The Coordinate Bench of this Court in the case of *Neeraj Jindal (supra)* 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



CR-5396-2024

4

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 re-examine 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 LR 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.”

7. The Rajasthan High Court in the case of **Pura Ram (supra)** had observed that merely because of change of counsel and the new counsel wanting to put some additional questions to the witness, it does not afford a valid justification to the defendant to apply for recalling the witness whose statement has already been recorded and whom he was earlier allowed to cross-examine.



8. In the present case, it is apparent that the present application has been moved for recalling the witnesses only for the purpose of delaying the proceedings. Plaintiff-respondent no.1 had filed a suit for specific performance on the basis of agreement to sell dated 10.07.2017 in the year 2019. A perusal of the impugned order would show that PW-2 Jagtar Singh was cross-examined on 20.03.2023 and thereafter PW-3 Mandeep Singh was cross-examined on 20.05.2023 which was done after a gap of two months. The plea sought to be raised to the effect that the petitioner was not happy with the counsel, who had cross-examined the said two witnesses apart from being irrelevant, does not stand substantiated inasmuch as the two witnesses were cross-examined after a period of two months and in case the petitioner was unhappy with the cross-examination carried of PW-2 Jagtar Singh on 20.03.2023, then he should have engaged a new counsel prior to cross-examining PW-3 Mandeep Singh on 20.05.2023. Moreover, it could not further be disputed that the counsel, who had cross-examined the said two witnesses, was the one who had cross-examined another witness PW-4 on 24.07.2023 and no application had been filed at that stage also and it is only after the plaintiff had concluded his evidence and even the defendant had tendered into evidence two witnesses i.e., DW-1 and DW-2 that the application dated 23.05.2024 (Annexure P-7) was filed. A perusal of the application would show that there is no specific pleading with respect to on what aspects the above said witnesses were stated to be not properly cross-examined and on what aspects the further cross-examination of said two witnesses was to be done. The sole reason for seeking cross-



CR-5396-2024

6

examination of the said two witnesses being a change of counsel and the earlier counsel being not competent, is not a valid reason for recalling the witnesses inasmuch as in case the application on the said ground is allowed, then it would lead to a never ending process of the litigants seeking cross-examination of the earlier witnesses to either delay the proceedings or to fill up the lacuna. The same cannot be permitted. Moreover, a perusal of Order 18 Rule 17 CPC would show that it is the Court which has the power to recall any witnesses who has been examined and put questions to him as the Court thinks fit and there is no vested right in a private party to seek recalling of the witnesses for the purpose of further cross-examination. The trial Court after considering the entire issue has found that the application has been moved only to delay the proceedings and the order passed by the trial Court is in accordance with law and does not call for any interference.

9. Keeping in view the above said facts and circumstances and the law laid down in the above said judgments, the present petition is meritless and deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 18, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No