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

CR-5779-2024 (O&M)

Date of decision: 14.10.2024

Kuldip Singh and another

...Petitioners

Versus

Kamaldeep Singh

...Respondent

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

Present: Mr. Manuj Nagrath, Advocate for the petitioners.

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**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 07.09.2024 passed by the Rent Controller, Ludhiana in case titled as “Kamaldeep Singh Vs. Kuldeep Singh” in RP-462-2019 whereby an application filed by the petitioners-tenant for further cross-examination of the respondent-landlord by recalling the said respondent has been dismissed.

2. Brief facts of the present case are that the respondent-landlord had filed a petition dated 16.10.2019 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for issuance of directions to the petitioners-tenant to put the respondent in possession of the premises in question. One of the grounds for eviction was personal



necessity. A reply to the said petition was filed by the petitioners on 09.03.2020 (Annexure P-2). The respondent-landlord had appeared as witness-PW1 and had submitted his affidavit dated 10.09.2021 (Annexure P-3). Thereafter, on an application filed by the respondent, who is a resident of Patna, the Rent Controller vide order dated 04.03.2022, on the statement made by learned counsel for the petitioners that he would cross-examine the respondent-landlord on 07.03.2022, had granted an opportunity to the counsel for the petitioners to cross-examine the said witness on 07.03.2022 and accordingly, a detailed cross-examination of the respondent-landlord was conducted by the counsel for the petitioners on 07.03.2022. The said cross-examination was a lengthy/detailed cross-examination as is apparent from Annexures P-4 and P-6.

3. It has not been disputed before this Court that the evidence of respondent-landlord had been concluded and an application was filed by the petitioners on 23.11.2022 (as has been fairly pointed out by learned counsel for the petitioners) for recalling the landlord (PW1) and the said application was filed by a new counsel who was engaged by the petitioners and the primary ground for seeking recall was that the previous counsel had not asked the material questions to the said witness. The said application was opposed by the respondent on the grounds that more than three opportunities had been taken by the petitioners yet they had not even examined a single witness and that the application was filed only to delay the proceedings. It was further pointed out that the affidavit



was tendered by the respondent-landlord on 10.09.2021 and the case was adjourned for cross-examination of the respondent-landlord to 02.12.2021 and on 02.12.2021, counsel for the present petitioners had sought an adjournment and thereafter, the matter was adjourned to 07.12.2021 and the matter was again adjourned to 27.01.2022. It was stated that the plea sought to be raised by the petitioners to the effect that the earlier counsel could not go through the contents of the affidavit was absolutely false, inasmuch as, the cross-examination was actually conducted on 07.03.2022, after a period of more than five months from the date the affidavit dated 10.09.2021 was tendered and that the previous counsel had conducted a detailed cross-examination. Reference was made to several judgments to state that merely on account of change of counsel, witness could not be recalled. Although, neither the application nor reply to the said application have been annexed along with the present revision petition but the said fact is apparent from a perusal of the impugned order dated 07.09.2024 and has also not been disputed before this Court.

4. The Rent Controller vide order dated 07.09.2024 had dismissed the said application and had observed that inefficiency or omission by the previous counsel does not constitute a valid reason for allowing further cross-examination of a witness and that the petitioners had ample opportunity to cross-examine the landlord, which was done by the previous counsel for the petitioners. It is the said order which has been challenged before this Court.

5. Learned counsel for the petitioners has submitted that the



petitioners had engaged a new counsel and after the counsel had studied the entire matter and had seen the affidavit in chief dated 10.09.2021, it was found that the cross-examination done by the previous counsel was not effective and certain relevant and material questions were not put to the said witness and has thus, prayed that the application for recalling be allowed and the petitioners be granted one opportunity to cross-examine the said respondent-landlord on the said material questions and for the same, the petitioners are ready to pay adequate compensation/costs. It is prayed that in view of the same, the impugned order be set aside and the application filed by the petitioners for recalling be allowed.

6. This Court has heard learned counsel for the petitioners and has perused the paper book.

7. 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 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 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.”*

8. The Rajasthan High Court in the case of **Pura Ram vs. Additional District Judge No.2 (Rajasthan)** reported as **2012(68) RCR Civil 677** 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.

9. The Coordinate Bench of this Court in the case of **Joginder Singh Vs. Devinder Kumar**, reported as **1999(1) PLR 24** had observed



that once a witness had been cross-examined, he could not be recalled for further cross-examination only on the ground that they were not cross-examined effectively by the Advocate who cross-examined them on the date they put in appearance and in case, such type of applications are allowed and witnesses are permitted to be further cross-examined, it would open a flood gate of litigation and a party would be entitled to move such applications either by changing counsel or by simply saying that on the earlier date, a specific question could not be put to the witnesses or that they could not be cross-examined effectively. Relevant portion of the said judgment is reproduced hereinbelow:-

*“6. After hearing learned counsel for the parties, I find that the two witnesses who appeared in Court on 18.11.1992 had been properly cross-examined by Sh. M.S. Chaudhary, Advocate. Nothing could be brought to my notice which may show that Sh. Chaudhary requested for a date or that after recording of the evidence of the witnesses, their cross-examination be deferred so as to enable Mr. Sharma to cross-examine them. **Once, the witnesses had been cross-examined, they could not be recalled for further cross-examination only on the ground that they had not been cross-examined effectively by the Advocate who cross-examined them on the date they put in appearance. If such type of applications are allowed and witnesses are permitted to be further cross-examined, it will open a flood gate of litigation and a party would be entitled to move such applications either by changing counsel or by simply saying that on the date the witnesses were cross-examined, a specific question could not be put to them or that they could***



*not be cross-examined effectively. Under the provisions of the Code, it is always open to the Court to recall the witness in case there is an ambiguity in his statement or the Court is of the opinion that some clarification is required. But the present is not the case of such type. Such requirement is the requirement of the Court.....”*

10. In the present case, apart from the fact that the application for recalling in view of the law laid down in the abovesaid judgments is not maintainable, it is also apparent that the same has been moved only to delay the proceedings. As has been noticed hereinabove, the rent petition was filed by the respondent-landlord in October, 2019 and one of the grounds for eviction was personal necessity. A reply was filed to the same on 09.03.2020 and the respondent-landlord was examined in chief on 10.09.2021 and ultimately, the cross-examination was conducted by the earlier counsel on 07.03.2022, which was after a period of more than five months from the date when affidavit/examination-in-chief was given by the respondent-landlord and thus, the earlier counsel had sufficient time to go through the said affidavit and to effectively cross-examine the respondent-landlord. A perusal of Annexures P-4 and P-6 would show that a detailed cross-examination was conducted by the earlier counsel for the petitioners. The present application, as has been fairly stated by the learned counsel for the petitioners, had been moved on 23.11.2022, i.e., after a period of more than eight months from the date of the cross-examination of the said respondent-landlord and in case, such an application 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 Rent Controller after considering the entire issue has found that the application has been moved only to delay the proceedings and the order passed by the Rent Controller is in accordance with law and does not call for any interference.

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

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

**14.10.2024**

*Pawan*

**(VIKAS BAHL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**