

**CR-6545-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(120)****CR-6545-2024****Date of Decision: - 02.12.2024****M.M. Sharma and another****....Petitioners****Versus****Harjeet Kaur****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Sachin Mittal, Advocate,
for the petitioners.

**********VIKAS BAHL, J. (ORAL)**

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 09.10.2024 passed by the Civil Judge, Junior Division, Kurukshetra thereby dismissing the application filed by the petitioner under Order 18 Rule 17 of CPC read with Section 151 CPC praying to recall the witness namely Harjeet Kaur for further cross-examination.

2. Learned counsel for the petitioners has submitted that the witness had appeared through video conferencing and thus certain material questions could not be put to the said witness and has prayed that the said witness, namely, Harjeet Kaur be recalled for further cross-examination. It is further submitted that the petitioners would finish their cross-examination if one opportunity is given.

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3. This Court has heard learned counsel for the petitioner and has perused the paper-book and is of the opinion that the present revision petition is meritless, deserves to be dismissed and the impugned order dated 09.10.2024 passed by the Civil Judge, Junior Division, Kurukshetra, dismissing the application filed by the petitioner for recalling the witness is in accordance with law and deserves to be upheld, for the reasons which are detailed herein after.

4. Respondent Harjeet Kaur, who is stated to be 80 years old lady, had filed a petition under the Haryana Urban (Control of Rent & Eviction) Act, 1973, for eviction from the residential home in question on the ground of arrears of rent, materially impairing the value and utility of the building & personal necessity. The premises in question is a residential house in Sector 3, Kurukshetra. The said petition is dated 20.07.2022.

5. Written statement dated 13.09.2022 was filed by the petitioner. A perusal of the impugned order as well as the zimni orders, which have been annexed alongwith the present revision petition, would show that the said Harjeet Kaur was present and examined partly on 13.02.2024 and her cross-examination was deferred at the request of learned counsel for the petitioners and the case was fixed for 06.03.2024 for her cross-examination. Even on 06.03.2024, the said witness Harjeet Kaur was present for being cross-examined, but the counsel for the petitioners sought an adjournment and the case was further adjourned to 19.03.2024. On 19.03.2024, the counsel for the petitioners cross-



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examined the said PW1 Harjeet Kaur and raised no objection with respect to the fact that he could not properly cross-examine the said witness on account of her having appeared through video conferencing. Since no other PW was present or examined, thus, the matter was adjourned for concluding entire evidence.

6. Petitioners-tenant moved an application under Order 18 Rule 17 of CPC read with Section 151 CPC for recalling the said witness Harjeet Kaur and in the said application it was vaguely stated that certain material questions could not be put to the said witness. No details of the said questions have been mentioned in the application. In the reply dated 23.08.2024 (Annexure P-4), filed by the respondent-landlord, a specific objection was taken to the effect that the petitioners had not approached the Court with clean hands and also to the effect that on two dates the said Harjeet Kaur had physically appeared and it was the counsel for the petitioners who had sought adjournments and at any rate, had fully cross-examined the said Harjeet Kaur on 19.03.2024 without any objection. Reliance in the said reply was placed upon a judgment of the Co-ordinate Bench of this Court in case titled as “***Binder Singh Vs. Babu Ram***”, ***reported as (2007) 4 PLR 30***, in which, it was observed that a mere averment on behalf of the petitioner to the effect that certain material questions could not be put to PW could not be a ground for recalling the said witness who had already been cross-examined. It was further averred that the respondent was more than 80 years of age.

7. The trial Court after considering all the facts and



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circumstances, including the fact that on 13.02.2024 and 06.03.2024, the respondent Harjeet Kaur who is an 80 years old lady, was physically present in the Court for her cross-examination and her cross-examination was deferred at the instance of counsel for the petitioners and thereafter, she was examined through video conferencing and her cross-examination was completed, dismissed the application vide order dated 09.10.2024. The said order is in accordance with law and apparently, the application was moved only to delay the proceedings without the petitioners having any legal right to seek recalling of the witness.

8. The Coordinate Bench of this Court in the case of ***Neeraj Jindal Vs. Manju, CR 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



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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.”

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9. 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.

10. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned order has been correctly passed and deserves to be upheld and the revision petition filed by the petitioner being meritless deserves to be dismissed and is accordingly dismissed.

December 02, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes