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

CR-7337-2024

Date of decision: 17.12.2024

Harish Kumar @ Harish Pal

...Petitioner

Versus

Sushil Kaushal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Inderjit Sharma, 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 11.11.2024 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Dasuya vide which an application filed by the petitioner under Order 18 Rule 17 read with Section 151 CPC for recalling the witness for evidence has been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner had filed an application dated 18.07.2024 (Annexure P-3) for recalling the witness i.e., PW4-Manu Kaushal, who is attorney of the landlord, as the earlier counsel could not satisfactorily ask all the questions from the said witness and when the new counsel examined the whole case then he found that on several points, the proper cross-examination has not been conducted of the said witness and thus, prayer was made for recalling the said witness so that he could be properly cross-examined. It is submitted that the trial Court, vide impugned order dated 11.11.2024, had dismissed the



said application in an illegal manner and thus, the said impugned order deserves to be set aside and the application filed by the petitioner deserves to be allowed.

3. This Court has heard learned counsel for the petitioner and has perused the paper book and is of the opinion that the impugned order has been rightly passed and the present revision petition is meritless and deserves to be dismissed for the reasons stated hereinafter.

4. The respondents-landlord had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on 05.09.2019 for ejecting the present petitioner from the shop in question on the grounds of personal necessity, non-payment of rent, change of business and material impairment. A written statement to the said petition was filed by the present petitioner. PW4-Manu Kaushal was examined and cross-examined also and the cross-examination was concluded on 13.09.2022 of the said witness. The present application for recalling the said witness was filed on 18.07.2024 i.e., after a period of two years from the date of the said cross-examination. The trial Court, vide order dated 11.11.2024, had dismissed the said application and while dismissing the same, the trial Court had observed that the present petitioner had availed 61 opportunities to lead his evidence and had even failed to prove the photographs which have been mentioned in the application and that the said PW4-Manu Kaushal has been cross-examined at length. It was further observed that recalling of the witnesses for further elaboration on left out points was impermissible in law.

5. The impugned order passed by the trial Court is legal and in accordance with law and apparently, the present application had been filed



only to delay the proceedings as the said application had been filed on 18.07.2024 whereas the said PW4-Manu Kaushal was cross-examined at length on 13.09.2022. Even the observation to the effect that 61 opportunities were given to the petitioner to lead his evidence has not been disputed before this Court. The evidence of Manu Kaushal and his cross-examination has not been placed on record to rebut the observation made by the trial Court to the effect that Manu Kaushal had been cross-examined at length. Mere change of counsel would not entitle a party to seek recalling of witness who has already been cross-examined. Thus, there is no merit in the present revision petition.

6. 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 **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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7. 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.

8. 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

17.12.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No