

**CR-201-2025(O&M)****130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-201-2025(O&M)
Date of decision: 15.01.2025****Balkar Singh and another****..Petitioners****Versus****Lakhwinder Singh****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. H.S.Saini, Advocate
and Mr. Dushyant Jog,, Advocate for the petitioner****ANIL KSHETARPAL, J. (Oral)**

1. The petitioner herein is the defendant as well as counter claimant in a pending suit for the grant of decree of declaration. The main suit is alleged to have been withdrawn whereas the counter claim is pending. The same is to be considered as plaint for all intents and purposes. Sh.Ranbir Singh is an attesting witness of the Will dated 20.02.2017. It is the petitioner who has propounded the Will. He summoned Sh.Ranbir Singh to appear as witness who appeared on 20.04.2023, however, refused to sign on the affidavit prepared by the petitioner. He got his examination in chief recorded in the court. The cross-examination was deferred. Ultimately, he was cross-examined by the respondent's counsel (respondent in the counter claim) on 22.02.2024.

2. Subsequently, the petitioner filed an application for recall of the witness on the ground that there is difference in the examination-in-chief and cross-examination of Sh.Ranbir Singh. The trial court has dismissed the same. The recall of the witness has also been sought on the ground that the

**CR-201-2025(O&M)**

lead counsel on behalf of the counter claimant (petitioner) was not present on the date i.e 22.02.2024. The trial court has dismissed the application. Recall of a witness is regulated by the provisions of Order XVIII Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), which reads as under:-

“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.”

3. As is evident, the petitioner has failed to make out a case for recall.

4. The art of cross-examining permits the counsel of a party to shake the credibility of a witness. It is not necessary that the statement in the examination-in-chief and cross-examination should be to the same effect. Veracity of the statement of a witness in examination-in-chief is subject to cross-examination by a counsel representing the opposite site. Hence, difference in the statement between examination-in-chief and cross-examination is not a ground to recall a witness.

5. Absence of lead counsel is also irrelevant because counsel representing the counter claimant was not to be cross-examined by the petitioner's counsel.

6. Keeping in view the aforesaid facts, no ground to interfere is made out.

7. Hence, dismissed.

CR-201-2025(O&M)

8. All the pending miscellaneous applications, if any, are also disposed of.

15.01.2025
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(ANIL KSHETARPAL)
JUDGE

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