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

CR-1910-2025 (O&M)

Reserved on : 02.04.2025

Date of Decision : 08.04.2025

Rajpal

... Petitioner(s)

Versus

Rishi Pal & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Pinki Mehla, Advocate for the petitioner
(through hybrid mode).

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 20.01.2025 (Annexure P-11) passed by the Additional Civil Judge (Senior Division), Kaithal, whereby the application filed by the plaintiff-petitioner to re-examine the plaintiff-petitioner has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for a decree of possession by way of specific performance on the basis of an agreement to sell dated 03.07.2017. After the evidence of the plaintiff-petitioner had been closed, the present application was filed for permission to re-examine the plaintiff-petitioner. The said application was dismissed vide the impugned order dated 20.01.2025. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner had moved an application to implead Roshni as a defendant and she had not appeared in the Court and had been proceeded

against *ex parte* and, therefore, it was essential for the plaintiff-petitioner to be re-examined.

4. I have heard the learned counsel for the plaintiff-petitioner.

5. In the present case, defendant No.2 - Roshni Devi - was impleaded as a party vide order dated 07.09.2022. Amended title and plaint was filed on 23.11.2022. Notice was issued to the newly impleaded defendant No.2 vide order dated 13.02.2023. Subsequently, vide order dated 11.12.2023 the said defendant No.2 - Roshni Devi - was proceeded against *ex parte*. Vide order dated 13.08.2019 the plaintiff-petitioner had already closed the oral evidence after he had been examined.

6. Hon'ble Supreme Court in the case of **Ram Rati Vs. Mange Ram (D) thr LRs & Ors. [2016 (2) RCR (Civil) 464]**, after considering the various judgments, has held as under :

“12. In Vadiraj Naggappa Vernekar (Dead) Through LRs. v. Sharadchandra Prabhakar Gogate 2009(2) RCR (Civil) 508: (2009) 4 SCC 410, this principle has been summarised at paragraphs- 25, 28 and 29:

“25. In our view, though the provisions of Order 18, Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

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28. The power under the provisions of Order 18, Rule 17 CPC is to be sparingly exercised and in

appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18, Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18, Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.”

13. In K.K. Velusamy v. N. Palanisamy 2011(2) RCR (Civil) 875 : 2011(3) Recent Apex Judgments (R.A.J.) 83 : (2011) 11 SCC 275, the principles enunciated in Vadiraj (supra) have been followed, holding at paragraphs 9 and 10:

“9. Order 18, Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18, Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been

examined. (Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate.)

10. Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18, Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

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18. The settled legal position under Order 18, Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.”

7. In the present case the application filed by the plaintiff-petitioner itself is bereft as to why the plaintiff-petitioner needs to be re-examined. There is not a word in the application to even remotely suggest the reason why the plaintiff-petitioner needs to be re-examined except for stating that Roshni Devi had been impleaded and was later proceeded against *ex parte*. It is trite that the provisions of Order 18 Rule 17 CPC are to be sparingly used and cannot be invoked for filling in the lacuna in the case. In the present case the Trial Court has specifically observed that the

witness was examined completely on 21.01.2019. Having examined the plaintiff-petitioner in detail, the present application cannot be allowed merely to fill in the lacuna in the case.

8. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.04.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO