



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

118

CR-2806-2024 (O&M)

Date of Decision: 07.03.2025

MAHABIR

.... Petitioner

VERSUS

NEHRU SINGH

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Dahiya, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 26.04.2024 (Annexure P-1) passed by the Civil Judge (Senior Division), Bhiwani whereby the application filed by the defendant-petitioner for recalling the plaintiff witnesses i.e. PW-2 Nehru Singh, PW-3 Desh Raj and PW-4 Jaipal for further cross-examination was dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for specific performance. After the pleadings were completed, the plaintiff-respondent concluded his evidence on 30.03.2019 and the defendant-petitioner herein concluded his evidence on 12.01.2023. Subsequently, the present application was filed for recalling the aforesaid witnesses of the plaintiff-respondent for further cross-examination. On 26.04.2024 the said application was dismissed vide the impugned order. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner would contend that there are certain questions which were not put to the witnesses of the plaintiff-respondent by the counsel representing the defendant-petitioner at that point of time and that certain material question suggestions are essential which need to be put to the said witnesses of the plaintiff-respondent.

4. Heard.

5. Order 18 Rule 17 CPC 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.”

6. In the present case the plaintiff-respondent concluded his evidence on 30.03.2019 and the defendant-petitioner concluded his evidence on 12.01.2023. Thereafter the present application was filed for recalling the aforesaid plaintiff-respondent's witnesses for further cross-examination. There is no cogent reason forthcoming as to why the said witnesses need to be recalled except for stating that certain material questions were not put at the time when they were being cross-examined. The Trial Court has noticed in the impugned order that PW-2 to PW-4 were cross-examined by the defendant-petitioner's counsel and the cross-examination was substantially lengthy. The only endeavour of the defendant-petitioner appears to fill in *lacuna* in his case which cannot be permitted in law. Once the plaintiff-respondent was examined and cross-examined at length, there was no

question of the witnesses being recalled merely on the ground that certain material questions were not put to the said witnesses.

7. 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.”

8. It is trite that the main purpose of Order 18 Rule 17 CPC is to enable the Court to clarify any doubt which it may have with regard to the evidence led by the parties. However, the said provisions cannot be used to fill omissions in the evidence of a witness who already stands examined in detail.

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

07.03.2025

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*