

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****203****CR-6703-2023 (O&M)****Date of decision: 06.05.2026****Rakesh****...Petitioner(s)****Vs.****Pala Ram****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Karan Singh, Advocate
for the petitioner.

Mr. Manvender Singh Dalal, Advocate and
Mr. Himanshu Kashyap, Advocate
for the respondent.

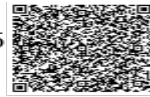
NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the defendant for setting aside the order dated 06.10.2023 (Annexure P-5) passed by learned Civil Judge (Senior Division), Kaithal in Civil Suit No. 248 of 2018; whereby application filed by the respondent/plaintiff to recall witness PW5 for re-examination, was allowed.

2. Brief facts of the case in chronological order are as follows: -

20.02.2018: Respondent/plaintiff had filed a suit (Annexure P-1) for possession by way of specific performance of Agreement to Sell dated 11.08.2016.

08.05.2018: Petitioner/defendant had filed written statement (Annexure P-2) to the said suit.



25.05.2018: Issues were framed vide order dated 25.05.2018.

21.11.2022: On 21.11.2022, respondent had moved instant application (Annexure P-3) to recall PW5 Pala Ram for re-examination under Section 137, 138 of Evidence Act and under Order 18 Rule 17 r/w Section 151 CPC.

17.01.2023: Petitioner had filed reply dated 17.01.2023 (Annexure P-4) to the said application.

06.10.2023: Vide impugned order dated 06.10.2023 (Annexure P-5), said application of the respondent has been allowed; whereby PW5 Pal Ram was permitted to be recalled for re-examination.

3. Hence, present Revision Petition.

4. It is *inter alia* submitted by learned counsel for the petitioner that PW5 Pala Ram is the middleman in the Agreement to Sell dated 11.08.2016 executed between the parties. As per the Agreement, target date for execution of Sale Deed was 2.01.2017. Plaintiff had duly examined PW5 during his evidence. During cross-examination of PW5, petitioner has specifically asked the said witness as to whether petitioner/defendant was present before the Sub Registrar on 02.01.2017 for execution of Sale Deed; to which PW5 had replied in affirmative that defendant/petitioner was present in the office of Sub Registrar on 02.01.2017. Learned counsel submits that even in his written statement, petitioner had clearly averred/pleaded that petitioner had remained present in the office of Sub Registrar on 02.01.2017 and it was the plaintiff who had not come to get the Sale

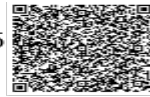


Deed registered as he was not having sufficient amount to honour the Agreement.

5. Learned counsel argues that from the above facts, it is clear that there is no ambiguity whatsoever in the evidence of PW5 and no doubt is created by the said witness in cross-examination. As such, plaintiff had no ground for filing the instant application for recalling of PW5. It is contended that if re-examination is allowed; then effect of cross-examination of the said witness would be demolished.

6. Ld. Counsel reiterates that Defendant/Petitioner has specifically taken the stand in Para no. 4 of Pre Objections that plaintiff/respondent was not having the sufficient amount to honour the agreement to sell and plaintiff/respondent himself showed his inability to make the payment to Petitioner and also showed his inability to arrange the balance sale amount and same is clear from the conversation recorded in the CD attached; and plaintiff not came on dated 02.01.2017 for registration of sale deed and PW-5 was cross-examined by the counsel for the petitioner on these points.

7. Learned counsel for the petitioner submits that therefore, there is no question of any ambiguity arising in the present case as the respondent was already aware of it as the petitioner has already taken this stand in the written statement and PW-5 was cross examined on the same ground which had already been taken by the petitioner in the written statement.

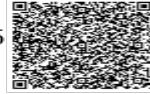


8. Learned counsel for the petitioner further submits that even as per section 138 of Indian evidence Act, cross-examination could not be confined only to the facts which the witness stated in examination in chief and the Id. Lower Court without going through these facts allowed the plaintiff to recall the witness for re examination.

9. It is accordingly prayed that the present Revision Petition be allowed; and the impugned order be set aside.

10. *Per contra*, learned counsel for the plaintiff/respondent submits that impugned order suffers from no error as previously PW5 Pala Ram had deposed that an Agreement ExPW1/A was executed by defendant in favour of the plaintiff in which he had appended his signature alongwith the plaintiff and defendant. However, during his cross-examination, PW5 has stated that plaintiff did not turn up to get the Sale Deed executed despite his request; and a Compact Disk has also been placed on file as 'Mark Z' for conversation between PW5 and plaintiff. It is submitted that it is only upon this fact that plaintiff had requested reexamination of the said witness for clarification. Learned counsel submits that in view of the above situation, the impugned order suffers from no error, and the present Revision Petition deserves to be dismissed.

11. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of the petitioner.

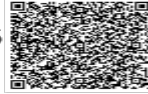


12. The instant application dated 21.11.2022 (Annexure P-3) has been filed by the respondent under Section 137/138 of the Evidence Act and under Order 18 Rule 17 read with Section 151 CPC. In para 6 of the said application, respondent has clearly pleaded as follows: -

“6. That now the plaintiff wants to re-examine PW-5 Pala Ram So Balku Vill. Bhagal, Tehsil Guhla, District Kaithal to resolve the ambiguity created by him during cross examination regarding non appearance of plaintiff for getting to register sale deed in view of agreement to sell Ex. PW1/A and regarding the producing of CD mark Z.”

13. However, as pointed out by learned counsel for the petitioner, there is no ambiguity with regard to the stand of the petitioner/defendant. As, petitioner has categorically averred in para 4 of the pre-objection of his written statement (Annexure P-2) as follows: -

“It is pertinent to mention here that the plaintiff himself admitted that he has no money to honour the agreement dated 11.8.2016 which is clear from the conversation recorded in the chip of mobile No. 95418-85755 as the conversation was held from the mobile No.95418-85755 to Mobile No.8571958429. The CD As attached herewith the same may kindly be read as part of this written statement. It is necessary to clear here that in the conversation plaintiff clearly showed his inability to arrange the funds/money rather he flatly refused and told that he was not in a position to arrange the amount of rupees one lakh too. The defendant was in dire need of money as the son of defendant namely Lovish was born in a hospital and remained admitted from 17.1.2017 to 31.1.2017 in Radha Krishan Children Hospital Kurukshetra and on the



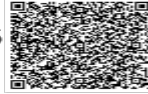
*treatment of his child the defendant spent huge amount.
... The defendant remained present in the office Sub Registrar
Kaithal on 2.1.2017 since 9.00 A.M. to 5.00 P.M. and waited for
the plaintiff, but the plaintiff did not turn up and finally the
defendant got his presence marked by filing an affidavit..."*

14. Thus, stance of the petitioner is crystal clear. PW5, in his evidence/cross-examination has merely reaffirmed the above said facts as stated by the petitioner in his written statement. Even the CD mentioned by the respondent in the application (Annexure P-3) has been attached by the petitioner with his written statement. Clearly therefore, there is no ambiguity in respect of the stand taken by the petitioner.

15. It is established principle of law that by way of an application under Order 18 Rule 17 read with Section 151 CPC, the respondent cannot be permitted to fill the lacuna in his case in this manner. The provision of Order 18 rule 17 of the Civil Procedure Code does not permit a party to re-examine any witness to fill up the lacuna in the case; and said provisions are only to enable the Court to clear any Doubt. But, in the present case there is no question of any doubt as the petitioner already has taken his stand in the written statement and Plaintiff witness was cross examined on these points in the evidence.

16. Moreover, an application of such nature cannot be moved by a private party; and it is only the Court which is empowered to recall a witness for clarification of any ambiguity. However, as pointed out above, there is no ambiguity in the stance or evidence of the defendant. As such,

application of the respondent was not maintainable.



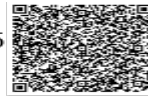
17. The legal position in an application under Order 18 Rule 17 CPC is very clear; inasmuch as this Court in **Pardeep Kumar Mehta v. Kamlesh Chander Mahajan, (Punjab And Haryana) : Law Finder Doc Id # 2806480** has categorically held as under: -

“Provisions of Order 18, Rule 17 of CPC primarily empower the Court to recall witnesses for clarification or eliciting further evidence, not to afford a party an unqualified right to reopen its evidence or fill up lacunae.

A. Civil Procedure Code, 1908 Order 18, Rule 17 - Recall of witnesses - Provisions of Rule 17 are enabling in nature and empower the Court to recall witnesses for clarification or eliciting further evidence for just decision - Rule does not confer upon a party an unqualified right to reopen its evidence or fill up lacunae - The discretion under Rule 17 must be exercised sparingly, judiciously, and only in exceptional circumstances where interests of justice so demand - Petitioner's application for recall and re-examination of witnesses dismissed being devoid of merit.”

The relevant paras of the said judgment are as under:-

“3.2. Having thus availed the opportunity granted by this Court, the petitioner has now moved yet another application seeking recall of the witnesses DW-3, DW-7, and DW-8. It is, however, well settled that the provisions of Order 18, Rule 17 CPC are enabling in nature, intended primarily to empower the Court itself to recall any witness if the Court considers it necessary to clarify any ambiguity or elicit further evidence for a just decision. The said provision does not confer upon a party an unqualified right to reopen its evidence or to fill up lacunae therein. The discretion vested in the Court under this provision must, therefore, be exercised sparingly,



judiciously, and only in exceptional circumstances where the interests of justice so demand.

3.3. The Hon'ble Supreme Court, in '**Subhkaran Singh v. Abhayraj Singh and Others, 2025 INSC 628**', has authoritatively reaffirmed this principle, holding that the power under Order 18, Rule 17 CPC is to be invoked by the Court for its own clarification and not to afford a party a second opportunity to improve its case, relevant extract is as under:-

"The said rule in our opinion, makes it abundantly clear that the right to put question to the witness recalled under Rule 17 is given only to the Court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the Court under that rule therefore, a witness cannot be recalled at the instances of the party for the purpose of examining, cross-examining or re-examining and that rule is not intended to serve such purpose, and the purpose for which that rule can be invoked is the one i.e. indicated above. The Hon'ble Apex Court further opined that if circumstances warrant, an opportunity to a party to recall a witness for examining, cross-examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under section 151 CPC."

(Emphasis mine)

18. From a reading of the above case law, it is clear that under Order 18 Rule 17 CPC, a witness can be recalled for reexamination only by the Court in order to clarify any ambiguity or elicit further information.

Under the said provision, a witness cannot be recalled for further reexamination on an application made by either party. The said provision



is not available to a private party; but is only available to the Court to remove ambiguity and to elicit further information.

19. Reference is also made to a judgment of Hon'ble Supreme Court passed in **Shubhkaran Singh v. Abhayraj Singh, (SC) : Law Finder Doc Id # 2726890**; wherein it is held that: -

"The power under Order 18, Rule 17 of CPC is primarily meant for the court to recall a witness for clarification, and not for parties to re-examine, cross-examine, or introduce additional evidence. This power must be exercised sparingly and only in exceptional cases."

The relevant para of the said judgment is as under:-

"8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that rule therefore, a witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that rule is not intended to serve such purpose, and the purpose for which that rule can be invoked is the one that is indicated above."

(Emphasis mine)

20. Learned counsel for the respondent is unable to controvert or dispute the above said legal position.

21. In view of the discussion hereinabove, this Revision Petition is **allowed**; and impugned order dated 06.10.2023 (Annexure P-5) passed by learned Civil Judge (SD), Kaithal is set aside.

22. Pending application(s) if any also stand(s) disposed of.

06.05.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(NIDHI GUPTA)
JUDGE