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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 14th February 2025*

+ CM(M) 244/2024
URMILA GUPTA

.....Petitioner

Through: Mr. Rajat Vadehra, Adv.
versus

PUNAM HARIT & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (O R A L)

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India for setting aside the order dated 06.10.2023, passed by the learned District judge, Rohini Courts in CS No. 954/2017, titled "*Punam Harit Vs. Devender Yadav & Ors.*", whereby, the trial court dismissed the application under Order 18 Rule 17 read with Section 151 CPC for recall of PW-1 for the purpose of further cross-examination.

2. Bearing in mind the limited nature of controversy in the present case, it is not necessary to advert to the detailed averments in the suit. Suffice to say that respondent No. 1 filed a Suit for Declaration to the effect that the documents of title in respect of immovable property, executed by respondent No. 1 in favour of the petitioner, be declared as illegal, invalid, *non-est* and void abinitio. Respondent No.1 also sought possession and recovery of rent and mesne profits against



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respondents No. 2 & 3.

3. On 09.02.2023, during the cross examination of PW-1, the learned counsel of petitioner confronted the witness with a document and sought confirmation of his signatures on the said document but the same was objected to by the learned counsel of respondents on the ground that such question cannot be put without describing the nature of the document. Both sides submitted that they would produce the case law, and therefore, the cross-examination was deferred.

4. On 15.09.2023, recalled PW-1 was cross examined by the learned counsel for the petitioner and was discharged. The order dated 15.09.2023 reads as under:-

“15.09.2023

Present: Sh S Chaturvedi, Id counsel for the plaintiff
Sh Sanjay Dalal, Id counsel for D-1 and D-2.
Sh Rajesh Hamal, Id counsel for D-3,
PW1/plaintiff cross-examined and discharged today.
Put up the case for remaining PE for which steps be taken by Id counsel for the plaintiff to summon the witness on filing of PF and dietmoney be paid on the spot, for 24.01.2024.”

5. Learned counsel for the petitioner submits that the counsel of petitioner carried out the cross examination of PW-1 for over an hour and left for Patiala House Court in the bona fide belief that cross examination of PW-1 has been deferred. Later that day, he came to know of the closure of cross examination of PW-1. Petitioner then filed an application under Order 18 Rule 17 read with Section 151 CPC for recall of PW-1 for further cross examination. However, the said application came be dismissed vide order dated 06.10.2023, which reads as under:-



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“1. Vide this order, application dated 16.09.2023 filed on behalf of defendant no.3 u/o XVIII Rule 17 CPC r/w 151 CPC for recalling plaintiff/ PWI for conducting further / remaining cross-examination, shall stand decided.

2. No reply to the present application has been filed by and on behalf of the plaintiff. However, Id. Counsel for the plaintiff has argued on the same at length.

3. I have heard Id. Counsel for defendant no.3, Id. Counsel - for plaintiff and have carefully gone through the record.

4. In the application in hand, Id. Counsel for defendant no.3 has cast certain aspersions towards the conduct of the Court as mentioned in para no.6, 7, 8 &9 of the application. However, the facts as stated in these paragraphs of the application, are absolutely incorrect since the ordersheet dated 15.09.2023 had been dictated in the presence of Id. Counsel for defendant no.3 wherein it is specifically dictated and noted down that “PW1/plaintiff cross examined and discharged today”. Therefore, it does not lie in the mouth of Id. Counsel for defendant no.3 to say that he was under the impression that cross-examination of PW1 had been deferred.

5. Apart from the above, on 15.09.2023, PW1 has been cross-examined at length for about two hours as himself stated by Id. Counsel for defendant no.3 in the present application. Not only this, PW1/plaintiff has been cross-examined by and on behalf of defendant no.3 on dated 08.04.2022, 12.04.2022, 26.04.2022, 14.11.2022, 09.02.2023 and on 15.09.2023. On all these dates, PW1 has been cross-examined on behalf of defendant no.3 at length.

6. The reasons assigned by Id. Counsel for defendant no.3 in the present application for recalling PW1 for further cross examination are not convincing. This Court very well remember that Id. Counsel for defendant no.3 was having many pages in his hand on which he had written questions to be asked from PW1 and it was only after that Id. Counsel for defendant no.3 had been asked by the Court that if all the questions have been asked/ put by him to PW1, it was only after the submission of Id. Counsel for defendant no.3 that cross-examination of PW1 was closed in the presence of Id. Counsel for defendant no.3.

7. In view of the above, I do not find any substance in the application filed on behalf of defendant no.3 u/o XVIII Rule 17 CPC dated 16.09.2023. The same is accordingly dismissed.”

6. Learned counsel for the petitioner has submitted that objection raised by respondent No. 1 on 09.02.2023 was yet to be decided. Petitioner therefore did not ask any further question in respect of the



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said aspect. It is submitted that the cross examination of respondent No. 1 on pivotal aspect of exclusion of documents could not be said to have been completed and respondent ought not to have been discharged on 15.09.2023.

7. It is submitted that a court matter of the counsel of petitioner was listed before Patiala House Court at 2.00 pm and therefore in his anxiety to rush to Patiala House Court, the counsel misunderstood and bonafidely believed and remained under impression that further cross examination of PW-1 has been deferred.

8. It is stated that the right to cross examine a witness is an indefeasible, valuable right and an integral part of fair trial, and therefore, such right cannot be denied to the petitioner.

9. Learned counsel for the respondent has vehemently contested the petition submitting that the counsel of petitioner had consciously concluded the cross examination and by filing the application under Order 18 Rule 17 CPC, he just wants to fill in the lacunas left in the cross examination. Relying on the judgment of Himachal High Court in the case of **Sailo Ram & etc. Vs. Kuldip Chand & etc. 2002 SCC Online HP 44**, it is submitted that revision lies against the impugned order of dismissal of application under Order 18 CPC. Revision being the most efficacious remedy, petition under Article 227 of the Constitution of India is not maintainable.

10. Order XVIII Rule 17 of the CPC reads thus:-

“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.”



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11. A plain reading of the aforesaid provision makes it clear that a witness may be recalled only where the Court desires to put any question to the witness. However, the scope of this provision has been expanded by the judicial decisions to include even the applications by the parties seeking to recall a witness. Thus, Order 18 Rule 17 CPC gives discretion to the Court which can be exercised either on its own motion or on an application filed by any of the parties to the suit. Even, the decisions which have expanded the scope of Order 18 Rule 17 CPC, make it clear that recall of witnesses can only be for the purpose of clarifying any doubt which may be there with the Court, or for the Court to obtain clarity with respect to the exact contours of the controversy before it.

12. In the case of **Ram Rati Vs. Mange Ram (2009) 4 SCC 410**, the Supreme Court held as under:-

“11. The respondent filed the application under Rule 17 read with Section 151 of the CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. —No prejudice is caused to either party” is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court



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but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.”

13. In **Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate (2009) 4 SCC 410**, the Court explained the scope of Order 18 Rule 17 CPC, in the following important paras:-

“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.

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 reexamination 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 hereinabove, 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.”

14. In the case of **K..K. Velusamy v. N. Palanisamy(2011) 11 SCC 275**, the scope of order 18 Rule 17 has been succinctly explained in paragraphs 9 & 10, which are extracted below:-

“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



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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*)

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.”

15. After referring the aforesaid three decisions, the learned Single Judge of this Court in the case of **Smt. Sunita Devi Vs. Sh. Raj Kumar Singhal, 2022/DHC/004692**, summarized the legal position as under:-

“13. A holistic reading of the aforesaid passages from *Ram Rati* makes it clear that, classically, the recall of a witness under Order XVIII Rule 17 has to be for clarifying any doubts which may exist despite the evidence already recorded and that, in this context, the Court is entitled to co-opt the assistance of the parties and permit questioning, by the parties, of the recalled witness. Nonetheless, in exceptional cases, the parties may also be permitted to apply for recall of witnesses under Order XVIII Rule 17 for further examination or cross-examination. In such cases, however, the Court would be exercising jurisdiction under Order XVIII Rule 17 read with Section 151 of the CPC. The manner in which Section 151 of the CPC would come in for application in such a case also stands identified by the Supreme Court in para 16 of *Ram Rati*², which reads thus:

“16. Some good guidance on invocation of Section 151 of the CPC to reopen an evidence or production of fresh evidence is also available in *K.K. Velusamy*⁴ (supra). To quote paragraph-14:



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14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

14. The resultant legal position is that, whether under Order XVIII Rule 17 or Order XVIII Rule 17 read with Section 151 of the CPC, a party may be permitted to recall a witness for further examination or cross-examination if (i) there exists any doubt remaining after the recording of the evidence of the said witness that has already taken place which is required to be clarified, or (ii) after the evidence of the witness has been recorded, the party seeking recall has comes across evidence on which he could not lay his hands earlier, or (iii) evidence in regard to the conduct or action of the other party has come into existence.”

16. In the present case, the ground urged by the petitioner in his application under Order 18 Rule 17 read with Section 151 CPC seeking recall of PW-1 into the witness box does not come within any of the exigencies envisaged by the Supreme Court in the case of Ram Rati (*supra*). All that is said is that the cross examination of PW-1 could not have been concluded on 15.09.2023 and there was no occasion to discharge the plaintiff’s witness without first affording an opportunity to defendant No. 3 to complete the remaining cross examination of the plaintiff.



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17. The trial court has clarified in the impugned order that the order dated 15.09.2023 had been dictated in the presence of learned counsel for the petitioner and the order sheet specifically records that “PW-1/plaintiff cross examined and discharged today.” The trial court has also taken note that PW-1 was cross examined at length on various dates i.e. 08.04.2022, 12.04.2022, 26.04.2022, 14.11.2022, 09.02.2023 and 15.09.2023. In fact, as per the learned Trial Judge, PW-1 was cross examined for about two hours on 15.09.2023. The trial court goes on to record that the cross examination of PW-1 was closed only after seeking confirmation from the learned counsel for the petitioner that if all the questions have been asked/put to PW-1. Thus, the submission of the learned counsel of petitioner that he was in a hurry to go to Patiala House Court and remained under the impression that further cross examination of PW-1 has been deferred, is contrary to the record of the case and is therefore not acceptable.

18. Since the learned counsel for petitioner had exhaustively cross examined PW-1 on several dates, the application filed under Order 18 Rule 17 CPC appears to have been filed with a view to fill in the lacunas, which as discussed, is not permissible.

19. In that view of the matter, I do not deem this to be an appropriate case to interfere with the impugned order in exercise of the jurisdiction vested in this Court by Article 227 of the Constitution of India.



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20. The petition is accordingly dismissed.

RAVINDER DUDEJA, J.

February 14, 2025

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