

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****133****CR-1975-2025 (O&M)****Date of Decision : 01.04.2025**

Didar Singh

....Petitioner

VERSUS

Ripudaman Singh (since deceased) through LRs & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vipin Mahajan, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging order dated 03.02.2025 whereby application filed by the petitioner (defendant No.5) under Order XVIII Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for recalling the witness PW-7 Dr. B.L. Goyal for further cross-examination, has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for declaration to the effect that he was owner in possession to the extent of 1/4th share of land as fully described in the plaint. Further challenge was to the sale deed executed by deceased – Harbans Kaur – in favour of defendant No.1 as also the sale deed executed by defendant No.4 being attorney of defendant No.2 in favour of defendant Nos.5 and 6. Dr. B.L. Goyal, retired Director, Mental Hospital as well as retired Principal, Government Medical College, Amritsar stepped into the witness-box as PW-7 on behalf of plaintiff-respondent No.1. He was examined on

15.01.2024 and was cross-examined through video conferencing on 09.07.2024 and 05.08.2024. On 05.08.2024 the cross-examination of the said witness was completed. Thereafter, an application was filed by the petitioner under Order XVIII Rule 17 CPC for recalling the witness PW-7 Dr. B.L. Goyal for further cross-examination on the ground that due to inadvertent mistake and oversight the witness could not be cross-examined qua the medical terminology and hence the witness be recalled for further cross-examination. Reply was filed to the said application. Vide the impugned order the said application was dismissed. Hence, the present revision petition.

3. Learned counsel for the petitioner would *inter alia* contend that there are certain medical terminologies referred to by the witness which were not clarified by the counsel during the cross-examination due to his lack of medical knowledge and therefore the witness was required to be recalled.

4. Heard.

5. In the present case the application has been filed under Order XVIII Rule 17 read with Section 151 CPC. Order XVIII 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. 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, except for stating that certain medical terminologies need to be clarified, no other cogent reason is forthcoming for re-examining an expert witness or recalling him for further cross-examination. It is trite that the provisions of Order XVIII 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 said witness was examined at length by the counsel for the defendants. Having examined a witness in detail on two occasions, present application cannot be allowed merely to fill in the lacuna in the case. Merely for explaining the medical terminologies, the witness cannot be recalled. The petitioner (defendant No.5) is yet to lead his evidence and would always be at liberty to lead his evidence in accordance with the law to bring on record the meaning of the said medical terminologies, if he so desires.

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.

01.04.2025

jk

(ALKA SARIN)

JUDGE

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