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

CR-1517-2025

Date of decision:-27.03.2025

Jagmohan Singh

...Petitioner

Versus

Kavita Varma

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr. Deepam Raghav, Advocate
for the petitioner.

SUVIR SEHGAL, J.(ORAL)

1. By way of present revision petition filed under Article 227 of the Constitution of India, petitioner/defendant has approached this Court assailing order dated 21.11.2024, Annexure P3, whereby an application moved by him under Order 18 Rule 17 CPC for re-examination of the respondent/plaintiff has been dismissed by the Trial Court.

2. Counsel for the petitioner asserts that the plaintiff closed her evidence on 16.07.2024 and when the petitioner/defendant was in the process of preparing his evidence, it emerged that certain facts necessitated further clarification from the plaintiff. He submits that the plaintiff was therefore required to be re-examined for which purpose an application, Annexure P1, has been filed, but the Trial Court has erred in rejecting it. Counsel asserts that the defendant has not commenced his



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evidence and in case the plaintiff is not permitted to be re-examined, defence to be led by the defendant is likely to be seriously prejudiced.

3. I have heard counsel for the petitioner and considered his submissions besides examining the documents placed on record.

4. Respondent/plaintiff has filed a suit, Annexure P4, for declaration with consequential relief of permanent injunction against the petitioner/defendant, who is her brother. Dispute pertains to properties left behind by their father, Colonel Charan Singh Varma, who expired on 22.06.2020. Upon being served, petitioner/defendant filed his written statement contesting the suit and the Trial Court framed issues on 15.03.2023 on the basis of pleadings of the parties. Plaintiff concluded her evidence on 16.07.2024 and proceedings were deferred for the evidence of the defendant. However, instead petitioner/defendant filed an application, Annexure P1, on 05.11.2024 under Order 18 Rule 17, CPC for re-examination of the plaintiff, which has been declined vide order impugned herein.

5. Order 18 Rule 17 CPC vest power in the Court to recall and examine any witness. The provision provides that the Court may at any stage of the suit recall any witness, who has been examined and may put such questions to him/her as the Court thinks fit. The power is discretionary and is to be used sparingly in appropriate cases to enable the Court to clarify any doubt that it may have with regard to the evidence led by the parties. This power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. In *K.K. Velusamy Versus N. Palanisamy (2011) 11 SCC*



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275, Hon'ble Supreme Court has observed as under:

“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.

11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the Court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This



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inherent power of the Court is not affected by the express power conferred upon the Court under Order 18 Rule 17 of the Code to recall any witness to enable the Court to put such question to elicit any clarifications.”

6. Hon’ble Supreme Court has clarified that power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely on the asking as that would defeat the very purpose of the various amendments to the Code to expedite the trial.

7. When examined in the light of the judgment of the Hon’ble Supreme Court, it is evident that the application for recall of the plaintiff has been moved by the petitioner/defendant in a casual manner. Petitioner had ample opportunities to cross-examine the plaintiff, which he availed of himself. By merely observing that some clarification is required without giving any details, petitioner cannot be permitted to seek recall of the witness, who has already been examined. Intention of the petitioner seems to harass his middle aged estranged sister by forcing her to step into the witness box again. Application is not *bona fide* and is an abuse of the process of Court. No interference is called for in the order passed by the Trial Court.

8. Finding no merit in the revision petition, it is dismissed, though with no order as to costs.

(SUVIR SEHGAL)
JUDGE

27.03.2025

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No