

**IN THE COURT OF SH. SACHIN SOOD
DISTRICT JUDGE-01, CENTRAL
THC, DELHI**

CS NO. 15291/08

RAKESH

.....PLAINTIFF

V E R S U S

BHOLE & ORS.

.....DEFENDANTS

ORDER

1. Vide the present order, the application filed by the LRs of defendant no. 25 under Order 18 Rule 17 of Civil Procedure Code, 1908, CPC is being decided.
2. The Lrs of defendant no. 25 have filed the present application seeking to recall PW-1 i.e. Sh. Rakesh for cross-examination on the ground that PW-1 could not be cross-examined on 05.12.2022 by the Counsel for the defendant no. 25 who could not reach the court in time and vide the said order i.e. 05.12.2022, the right to cross-examine PW-1 by the defendants was closed.
3. It has been contended in the said application that defendant no. 25 has always been represented by his counsel and has never sought a single adjournment for the cross-examination of PW-1 and it is only on one date of hearing i.e. on 05.12.2022 that counsel for defendant no. 25 could not reach in time whereby the right to cross-examine of PW-1 by defendant no. 25 was closed.
4. It has further been contended that at time when opportunity to cross-examine PW-1 was closed, defendant no. 25 was not keeping good health and was almost on the bed and finally expired on 10.06.2024. It has further been contended that since only defendant no. 25 was dealing with the present matter as well as the counsel

hence, his LRs were not aware about the present case and the pendency of the present case came to the knowledge of aforesaid LRs of defendant no. 25 only upon the service of the summons of the application under Order 22 Rule 4 CPC after the demise of defendant no. 25.

5. It has further been contended that initially the LRs of defendant no. 25 contacted the previous counsel and subsequently the LR Sh. Amodh Kumar Bhiduria who is a practicing advocate inspected the file and applied for complete certified copy of the court file which was made available to him on 28.01.2025. From the certified copies of the court file, the LRs of defendant no. 25 gathered knowledge that the opportunity of defendant no. 25 to cross-examine PW-1 was closed on 05.12.2022.

6. It has further been contended that no prejudice would be caused to the plaintiff if the opportunity to cross-examine PW-1 is granted to the LRs of defendant no. 25 more so, since a CM(M) petition against the closure of the evidence of one of the plaintiff's witness is pending disposal and the Hon'ble High Court of Delhi has directed not to close the right of the plaintiff to lead evidence until the final decision of the CM(M) petition.

7. It has been argued by the counsel for Lrs of defendant no. 25 that a party should not made to suffer due to a mistake on the part of the counsel and cause of justice should be advanced.

8. No reply to the said application has been filed by the plaintiff. Ld. Counsel for the plaintiff has submitted that the provisions of Order 18 Rule 17 CPC cannot be used in a routine manner and the powers under Order 18 Rule 17 cannot be exercised at the mere asking of the parties and more particularly to fill-up the lacunas.

9. It is further submitted that there is a considerable delay in filing the present application since the right to cross-examine PW-1 stood closed on 05.12.2022 and the present application which has been filed only on 14.02.2025 is clearly malafide.

10. Arguments Heard. Considered.

11. In the present matter the issues were framed on 23.03.2019. Evidence by way of affidavit of PW-1 was filed on 25.05.2019 and the same was tendered on 31.08.2019. Thereafter as recorded vide order dated 16.11.2019, 18.01.2020, 15.01.2022, 16.09.2022 goes to show that the matter was adjourned due to the adjournment/pass over sought by the plaintiff and the opportunity to cross-examine PW-1 was closed on 05.12.2022 since none has appeared on behalf of defendant no. 25 despite the court waiting and despite repeated calls.

12. Perusal of the subsequent orders i.e. 27.01.2023, 25.02.2023 shows that counsel for defendant no. 25 had not appeared before the court despite waiting and despite repeated calls. Ld. Counsel for defendant no. 25 had appeared on 25.03.2023 who was not present on 26.04.2023, 06.05.2023, 10.07.2023 and had thereafter only appeared on 01.08.2023. The matter was thereafter was listed on 05.08.2023, 01.09.2023, 25.09.2023, 21.10.2023 for the impleadment of the Lrs of defendant no. 12. PW-2 was examined, cross-examined and discharged as recorded vide order dated 02.12.2023 on which date, PE was closed and the matter was listed for DE. Defendant no. 25 who is stated to have expired on 10.06.2024 was althroughout alive and was duly represented by his counsel. No objection whatsoever was taken on behalf of defendant no. 25 to the effect that his right to cross-examine PW-1 stood closed vide order dated 05.12.2022.

13. The conduct of the defendant no. 25 is evident from the aforesaid orders of the court who was indifferent of the proceedings of the present suit. The present application which has been filed only on 14.02.2025 has been premised primarily on the ground that defendant no. 25 was not keeping good health and was almost on the bed and finally expired on 10.06.2024. It has not been stated in the said application since when defendant no. 25 was not keeping good health that nothing has been disclosed as to the status of the health of defendant no. 25 in the year-2022. As is also evident from the aforesaid that defendant no. 25 was represented by a counsel who cross-examined PW-2 and in whose presence the PE was closed who yet was indifferent about the closure of the right to cross-examine PW-1. Moreover, perusal

of the proceedings held on 25.09.2023 goes to show that defendant no. 25 had appeared physically in the court which would not have been possible had defendant no. 25 was not keeping good health and as sought to be represented in the present application. The provisions of Order XVIII Rule 17 CPC reads as under:

“17. Court may recall witness and examine witness:

The court may at any stage of the 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.

14. In the matter of Ram Rati Vs Mange Ram (D) through LRs & Ors 2016 (157) DRJ 7 (SC) vide para 11 it has been 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 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.”

15. Further in the matter of ***Vadiraj Naggappa Vernekar Vs. Sharad Chandra Prabhakar Gogate 2009(4)SCC 410*** it has been held as follows:

“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 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 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 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.

16. In a recent judgment passed by the Hon'ble Apex Court in the matter of Shubkaran Singh vs. Abhayraj Singh and ors; 2025 INSC 628, the Hon'ble Apex Court has extensively dealt with the provisions of Order 18 Rule 17 CPC and has extensively discussed the legal principals enunciated in the matter of K.K Velusamy vs. N. Palanisamy (2011) 11 SCC 275 wherein it has been held as under :-

“12. In the case of K.K Velusamy vs N. Palanisamy reported at (2011) 11 SCC 275, this court discussed the power of the court under Order 18 Rule 17 of CPC. It was held that this power is only for clarification i.e. to enable Court to clarify any Leau or it may have in regard to evidence led by parties by recalling any witness so that the Court itself can put questions to such witness and elicit answers. The relevant paras 9. 10 and 19 read as under;-

"9. 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, ofcourse, permit the parties to assist it by putting some questions.

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 OF 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, the parties to permit questions. assist of course, some it by putting some questions.

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19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the

issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and exercise its sufficient reasons, discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the court process does not become a protracting tactic. The court party to compensate for the delay. Secondly, the court should firstly award appropriate costs to the other should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application frivolous, is found to be mischievous, or frivolous or to cover up negligence or lacunae, it should be rejected with heavy costs." ...Emphasis supplied

17. Thus from the aforesaid judgments, it is clear that powers under Order 18 Rule 17 permits recalling any witness at any stage, who has been examined, but the said powers are to be exercised sparingly and where the Court deems it appropriate that exercise of such powers are necessary. However, the said powers cannot be exercised to allow the party to fill-up the lacunas in his case.

18. Keeping in view the aforesaid and the judgments passed by the Hon'ble Supreme Court of India and Hon'ble High Court of Delhi, this Court is of the view that the defendants have failed to make out a case to exercise the powers under Order 18 Rule 17 more particularly when the entire basis of the present application i.e. the defendant no. 25 was not keeping good health is falsified by his appearance before the court and as recorded vide order dated 25.09.2023.

19. In view of the aforesaid, the present application under Order 18 Rule 17 CPC is hereby dismissed.

Announced in the open court
on 19.11.2025

(SACHIN SOOD)
DJ- 01 (Central)
THC, Delhi.