

**IN THE COURT OF SH. SHIV KUMAR.  
DISTRICT JUDGE-02, WEST DISTRICT  
TIS HAZARI COURTS; DELHI**

P.C. No. 33/2021

ROHIT SACHDEVA

.....PETITIONER

Vs.

STATE & ORS.

... RESPONDENTS

**ORDER ON APPLICATION FILED ON BEHALF OF  
RESPONDENT NO. 2 UNDER SECTION 151 CPC READ  
WITH ORDER 18 RULE 17 CPC FOR RECALLING OF PW-2  
FOR FURTHER CROSS-EXAMINATION AND RECALLING  
OF ORDER DATED 07.10.2024.**

1. Vide this order i shall decide the application filed on behalf of respondent no. 2 under section 151 CPC read with order 18 Rule 17 CPC for recalling Of PW-2 for further cross-examination and recalling of order dated 07.10.2024.

2. It is averred in the application that on 07.10.2024, PW-2 Sh. Deepak Thakur, (attesting witness) who is one of the attesting witness to the Will, was examined and cross-examined on behalf of respondent no. 2. It is further averred that the applicant/respondent no. 2 wants to further cross-examine PW-2 as some of the leading questions inadvertently could not be put to PW-2 which have bearing on the outcome of the present petition and the outcome will adversely prejudice the applicant, who is respondent no. 2.

3. It is further averred in the application that procedural lapses or infirmities should not eclipse the substantive rights of the parties, therefore, applicant seeks the permission of the court to cross-examine PW-2, in the interest of justice.

4. Reply to the said application has been filed on behalf of the petitioner.

5. It is contended by the petitioner that the present application is gross abuse and misuse of process of law. It is further contended that the applicant has moved the present application without explaining why at the time of cross-examination of PW-2 the alleged leading questions were not put to PW-2. It is further contended that perusal of the cross-examination of PW-2 clearly depicts that the leading questions were put to PW-2 and ld. counsel for respondent no. 2 himself concluded the cross-examination of PW-2. It is further contended that there is no ground made out to recall the PW-2 for cross-examination.

6. It is further contended that in the entire application what leading questions have been left to be put to PW-2 and how the same will affect the rights of the respondent no. 2 have not been disclosed by the respondent no. 2. It is further contended that the present application has been moved by the respondent under order 18 rule 17 CPC. It is contended that order 18 rule 17 CPC is the power of the court to put question to any of the witness. The said power of Hon'ble Court cannot be used by the respondent to fill up gaps and lacuna in his case. The said

provisions is an enabling provision for the convenience of the court and a party to the suit can not invoke the said provision, therefore, it is submitted that application of the respondent is liable to be dismissed.

7. I have heard arguments from both sides and perused the entire case file.

8. In the present case, on 7.10.2024, PW-2, one of the attesting witness was examined in court and duly cross-examined by Sh. Amit Bhatia, ld. counsel for respondent no. 2.

9. Ld. Counsel for respondent no. 2 has argued that PW-2 is an advocate and is a material witness, who has alleged to prepare the Will in question. He further argued that the testimony of the attesting witness is on a higher pedestal and no prejudice would be caused to the petitioner, in case, he is allowed to put further leading questions to PW-2. He further submits that the Will in question is a forged and fabricated will and only one opportunity be given to him to further cross-examine PW-2.

10. Ld. Counsel for the petitioner has argued that the above said facts were already in the knowledge of ld. Counsel for respondent no. 2 and ld. Counsel for respondent no. 2 wanted to cross-examine PW-2, before the cross-examination of PW-1. Ld. Counsel for the petitioner further submits that the present application has been filed just to delay the proceedings of the present petition and there is no change in the situation except change of counsel of R-2. Ld. Counsel further argued that the

provision u/o 18 rule 17 CPC has not been made for the parties and it can be used only by the court. He further argued that R-2 cannot be allowed to fill the lacuna. He further argued that even Id. Counsel for R-2 has not disclosed the questions to be asked to PW-2.

11. The Hon'ble Supreme Court of India in a case titled as **“Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr, (2006) 1 SCC, 75** has observed that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It is further observed by Hon'ble Apex court that procedure a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

12. The moto of justice is that the substantive rights of the parties should be decided on merit after allowing all the parties to put their case before the court. It is also settled law that the procedural hurdles and technicalities should not be allowed to defeat the substantive rights of the parties.

13. It is a matter of record that PW-2 is the attesting witness of the Will in question and is a material witness. It is also matter of record that PW-2 has been duly cross-examined by Id. Counsel for the R-2. PW-2 was examined and cross-examined on 07.10.2024 and the case was fixed for 03.02.2025 for cross-examination of PW-1. The present application has been filed by R-2 on 03.02.2025, so there is no delay in filing the above said application. Ld. Counsel for R-2 has cross-examined

the PW-2 on the date of his examination in chief in the court itself. No adjournment has been sought by ld. Counsel for R-2 for cross-examination of PW-2. So, this court does not find any merit in the submissions of the ld. Counsel for the petitioner that R-2 wants to delay the trial of the present case.

14. It is settled position of law that under order 18 rule 17 CPC, parties have no right to recall any witness for further examination, cross-examination or re-examination. However, under section 151 CPC the court can allow any of the parties to recall any witness for further examination, cross-examination or re-examination, if circumstances of the case warranted so for the purpose of doing justice to the parties.

15. In view of the above said facts and observation, this court is of the opinion that no prejudice would be caused to the petitioner, if R-2 is allowed to put further leading questions to PW-2. Therefore, the present application of respondent no. 2 stands allowed subject to cost of Rs. 3,000/- to be paid to the PW-2 and only 30 minutes time has been given to ld. Counsel for R-2 to conclude the cross-examination of PW-2. The present application stands allowed accordingly.

(SHIV KUMAR)  
District Judge-02,  
Court no.127,  
West Distt, Tis Hazari courts  
Delhi:01.07.2025.