

RCS No.50/2018  
Laxmibai -VS- Sunil

ORDER BELOW EXH.45  
(Passed on 08/04/2025)

This application is filed by the defendant for permission to further cross-examine the plaintiff. Plaintiff filed say below Exh.46 and resisted the application on the ground that the witness cannot be recalled after cross-examination as there are no grounds put up by the defendant for recalling the witness.

2. Heard Adv. Shri. Kushwaha for the defendant and Shri. Agrawal for the plaintiff. Perused the application, say and record of the case.

3. It is the submission of the Adv. Kushwaha for the defendant that defendant already cross-examined the plaintiff but while going through the record, it came to knowledge that certain important documents which had been filed by the plaintiff are not cross-examined. Those are goes to the roots of the matter. Therefore the plaintiff is required too be cross-examined further on those documents. He submitted to allow defendant to cross-examine the plaintiff.

4. Adv. Shri. Agrawal for the plaintiff submitted that plaintiff filed evidence below Exh.30 on 12.12.2023. Defendant cross-examined the plaintiff on 11.06.2024. Plaintiff closed his evidence by filing pursis at Exh.41. Very lengthy cross-examination has been taken. The application is without merit. It is filed only to delay the suit and harrasing the plaintiff. Plaintiff is deliberately delaying the proceedings and hence he prayed to reject the application with compensatory cost of Rs.50,000/- under Section 35(b) of CPC. He relied upon the judgment of

Hon'ble Supreme Court in Ram Rati VS Mange Ram 2016 (11) SCC 296, Vadiraj VS Shardachandra 2009 (4) SCC 410, judgement of Hon'ble Calcutta High Court in Ajit VS Dilip AIR 2024 Calcutta 194 and the judgment of Hon'ble Andhra Pradesh High Court in Velegu VS Velegu in AIR 2019 A.P. 34 and submitted that application be rejected with cost.

5. As per order 18 Rule 17 of CPC, the Court may recall and examine any witness at any stage of a suit who has been examined and may put such question to him as the court deems fit. Subject to law of evidence for the time being in force.

6. I have carefully gone through record, it seems that the present suit is filed for declaration, permanent and mandatory injunction. The dispute between plaintiff and defendant is about landlord and tenant. It is admitted fact that the plaintiff is tenant and defendant is landlord.

7. Plaintiff filed her evidence below Exh.30. On 18.06.2024, the defendant cross-examined the plaintiff and his cross-examination was completed. Thereafter below Exh.41 on the same day, plaintiff closed her evidence by filing pursis below Exh.41. Now the matter is kept for the evidence of the defendant. Defendant filed photographs below list Exh.44 on 09.07.2024. During argument, advocate for the defendant submitted that he wanted to cross-examine the plaintiff as regards these 2 photographs. It seems that defendant filed these documents after completion of the cross-examination of the plaintiff and then filed this application. It is nowhere mentioned in the application that on which documents, defendant actually want to cross-examine the plaintiff but only during the argument it is submitted by the advocate that he wanted

to take the cross-examination on these 2 photographs. The reason for not filing these 2 photographs on record either during or prior to the cross-examination of the plaintiff is nowhere mentioned by the defendant. On the contrary, those photographs shows that those are of a house and the place near the house. In such circumstances, defendant failed to mention in the application that the facts which are skipped by him during cross-examination of plaintiff and what will happen if he denied the cross-examination of plaintiff.

8. In the judgment of Hon'ble Supreme Court in **Ram Rati**, it is specifically held that, "*The power to recall the witness cannot be invoked to fill up any omission or lacuna in the evidence already lead by the witness.*"

9. In the judgment of **Vadiraj Nagappa Varnekar**, the Hon'ble Supreme Court held that, "*The powers under Order 18 rule 17 are not intended to be used to fill up omission in the evidence of a witness who is already been examined but the main purpose of Order 18 Rule 17 is to enable court to clarify doubts that may have arisen during the course of his cross-examination.*"

10. As per the judgment by Hon'ble Calcutta High Court in **Ajit VS Dilip**, it is held by Hon'ble High Court that, "*There was no foundational basis for such documents which were sought to be tendered in evidence. Merely by mentioning that inspite of best efforts said documents could not be traced out, recall of the witness after closure of evidence cannot be allowed.*"

11. In the judgement of **Velegu VS Velegu**, Hon'ble Andhra Pradesh High Court held that, "*Inherent Powers under Order 18 Rule 17,*

*failure to cross-examine witness on certain aspects is no ground enough to recall the witness for the purpose of further cross-examination. If this is allowed, the gaps will be fill up.”*

12. After going through the citations relied upon by the advocate for the plaintiff, it seems that the application of the defendant is casually filed. There are no reasons mentioned in the application what are the facts which are not asked during the cross-examination of the plaintiff. On the contrary, it is nowhere mentioned in the application that which documents the defendant wanted to rely and failed to rely while taking the cross-examination. What are the reasons caused to the defendant that he failed to file those documents on record and relied those documents while taking the cross-examination of the plaintiff. Failure to mention these reasons in the application, by the defendant goes to the root of the matter and shows that he is not entitle for the relief.

13. In the judgment of Hon’ble Supreme Court in Ramrati in Para No.18, it is held that, *“The settled legal position under Order 18 Rule 17 read with Section 151 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.”*

14. In the judgment of Vadiraj in Para No.25 to 30 , it is held as follows :-

*“25. In out 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 omission in the evidence of a witness who has already been examined.*

26. *As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.*

27. *In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after the cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under Order 18 Rule 17 CPC. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has been completed.*

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.*

*30. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case.”*

15. The application does not disclose the reasons and there is nowhere mentioned in the application that what effects are going to be happened on the ultimate decision of the suit. Therefore as there are no reasons mentioned in the application, the application cannot be allowed as a general rule. Hence, considering the judgment cited by the plaintiff as mentioned above, application cannot be allowed. Hence, I pass following order.

**- ORDER -**

1] The application (Exh.45) is rejected.

Kamptee

Date : 08/04/2025.

**(Mohan R. Kamat)**  
Civil Judge, Junior Division,  
Kamptee.