2025 INSC 628

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

Petition for Special Leave to Appeal (C) Nos.12012-12013/2025

SHUBHKARAN SINGH Petitioner(s)

VERSUS

ABHAYRAJ SINGH & ORS. Respondent(s)

O R D E R

1. Exemption Application is allowed.

2. Heard the learned counsel appearing for the petitioner.

3. This petition arises from the order passed by the High Court of Madhya Pradesh at Jabalpur dated 7-1-2025 in Miscellaneous Petition No.7264/2024 by which the petition filed by the petitioner - herein under the provisions of Order 18 Rule 17 of the Civil Procedure Code (for short, "CPC") came to be rejected.

4. It appears that the petitioner - herein also preferred a Review Petition No.117/2025. The Review Petition came to be rejected vide Order dated 27-2-2025.

5. In such circumstances, the petitioner seeks to challenge both the orders referred to above.

6. Order 18 Rule 17 reads as under:-

> *"17. 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."*

This Rule provides the Court with a power which is necessary for the proper conduct of a case. If it appears to a court trying the suit at any stage of the proceedings that it is necessary to

recall and further examine a witness it can always do so. This power can be exercised even at the stage of writing a judgment by the court. It is, however, proper that this power should not be exercised lightly and the rule is that it should be used sparingly and in exceptional cases only. The power is to be used for removing ambiguities, for clarifying the statement and not for the purposes of filling up the lacuna in a party's case. It is true that the power can be exercised by the Court at its own initiative and may even be so done at the instance of a party. Section 165 of the Evidence Act provides that a Judge may in order to discover or obtain proper proof of relevant facts, ask any question he pleases in any form at any time of any witness about any fact relevant. The section further provides that the parties shall not be entitled to make any objection to any such question, nor cross-examine any witness upon any answer given in reply to any such question without the leave of the Court. If the provisions of Order 18 Rule 17 are read along with the provisions of Section 165 of the Evidence Act it is clear that the power to recall and re-examine a witness is exclusively that of the court trying the suit. The parties to the suit cannot take any objection to the question asked nor can they be permitted to cross-examine any witness without the leave of the court.

8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that rule therefore, a

witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that rule is not intended to serve such purpose, and the purpose for which that rule can be invoked is the one that is indicated above.

9. In this connection, we may refer to the following observations in *Sultan Saleh Bin Omer* v. *Vijayachand Sirmal* [A.I.R. 1966, A.P. 295.], which accords with the above view:

> *"A close reading of this rule makes it obvious that the right under that Rule to put question at any stage or a suit or recall any witness for that purpose, is given to the Court. The court can put questions to the witness recalled, and no cross-examination is ordinarily allowed upon the answers to the questions put by the Judge without leave…….. It cannot therefore be said that an opportunity to a party to recall any witness for the purpose of examining cross-examining or re-examining is governed by O. 18, R. 17 C.P.C. ……..."*

10. We are of the opinion that if circumstances warrant, an opportunity to a party to re-call a witness for examining, cross-examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under Section 151 C.P.C.

11. This Court in the case of *Vadiraj Naggappa Vernekar* v. *Sharadchandra Prabhakar Gogate*, reported at (2009) 4 SCC 410 more particularly para 28 held as under:

> *"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 reexamination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC."*
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> (Emphasis supplied)

12. In the case of *K.K. Velusamy* v. *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 issue or doubt, 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, of course, 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 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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> ***xxx xxx xxx***
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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 sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the***

> ***process does not become a protracting tactic**. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."*
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> **(Emphasis supplied)**

13. In view of the position of law as explained aforesaid, the Special Leave Petitions stand dismissed.

14. Pending applications, if any, shall also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
5TH MAY, 2025.