

**(2006) 08 P&H CK 0554**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 4274 of 2006

Paramjit Kaur and Others

APPELLANT

Vs

Gurjant Singh and Others

RESPONDENT

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**Date of Decision:** Aug. 18, 2006

**Citation:** (2006) 4 CivCC 571 : (2006) 4 RCR(Civil) 646

**Hon'ble Judges:** Vinod K.Sharma, J

**Bench:** Single Bench

**Advocate:** J.R. Mittal, with Mr. Kashmir Singh, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

Vinod K. Sharma, J.

The petitioners by way of present revision petition have challenged the order dated 7.8.2006 passed by the Additional Civil Judge (Senior Division), Samana, vide which the application moved by the plaintiff- respondents for recalling Shri Navdeep Gupta, handwriting and fingerprints expert, has been allowed and he has been directed to be recalled for cross- examination.

2. The facts of the case are that Shri Navdeep Gupta was examined by the plaintiffs as PW-6. However, the cross-examination of this witness was deferred on the request of the petitioner herein, though copies of all the documents produced by the said expert had already been supplied to the Learned Counsel for the defendants, however, on account of mistake, he was not subjected to cross-examination and accordingly after examining the other witnesses plaintiffs closed their evidence on 28.11.2005. On closure of the defendants' evidence in May 2006, the case was fixed for rebuttal and arguments.

The case of the plaintiff-respondents was that while preparing the case for arguments, it was noticed that PW-6 has not been cross-examined due to inadvertent mistake. Accordingly, an application was made for recalling the said witness for cross-examination.

3. The application was contested by the petitioners herein on the plea that the present application has been moved to fill up the lacuna by recalling the said expert for cross-examination. The case of the petitioners herein was that an attempt is being made to rebut the evidence produced by them by examining their expert Shri N.K.Jain.

4 The learned trial Court came to the conclusion that non-cross-examination of PW-6 was on account of inadvertent mistake on the part of the plaintiffs. It was further observed that the plaintiffs had not intentionally tendered the said witness for cross-examination. Accordingly, keeping in view the interest of justice, the application was allowed and directions were given to the plaintiffs to produce the said witness positively on the next date for cross- examination at their own responsibility.

5. Shri J.R.Mittal, Senior Advocate, appearing with Shri Kashmir Singh, Advocate, for the petitioners, strongly contended that in the garb of cross- examination an attempt is being made to lead additional evidence which is not permissible. Learned Senior Counsel relied upon the judgment of this Court in Sachin v. Smt.Sunita Vashisht and others, 2005(2) Civil Court Cases 780 (P&H): 2005(2) RCR(Civil) 481 to contend that no additional evidence can be permitted by reopening affirmative evidence after closing of the evidence by defendant as it would result into great prejudice to defendants and also result in violation of principles laid under Order 18 Rule 3 of the Code. The learned Senior Counsel for the petitioners further placed reliance on the judgment of this Court reported in Harbhajan Singh v. Tariochan Singh, 2005(1) RCR(Civil) 847 to the effect that additional evidence cannot be permitted by recalling of a witness for taking thumb impression for comparison after closure of evidence.

6. The learned Senior Counsel for the petitioners further contended that it was only when the parties were leading evidence, it was possible to cross- examine a person and not after the closure of the evidence.

7. I have considered the arguments raised by the learned Senior Counsel for the petitioners and do not find any force in the same. This is not a case where any additional evidence has been allowed to be led by the Court by recalling a witness nor the present case can be said to be a case wherein an attempt is being made to fill up lacuna.

8. In the instant case, PW-6 had appeared as a witness on behalf of the plaintiff-respondents and his cross-examination was deferred on the request of the counsel for the petitioners herein. It is nowhere shown that any request was made by the petitioners herein to cross-examine the said witness.

9. Learned trial Court rightly held that it was on account of inadvertent mistake that PW-6 could not be cross-examined and therefore, the learned Court below rightly exercised inherent jurisdiction vested in it by recalling the said witness for

cross-examination, so that his evidence could be read in evidence.

10. Learned Senior Counsel for the petitioners thereafter submitted that the evidence of this witness is to be treated as evidence in affirmative and, thereafter the petitioners are to be given a chance to rebut the said evidence.

11. I have considered this argument also and find that the evidence of PW-6 has already been led and he has to be cross-examined by the petitioner and, therefore, it cannot be said that the evidence in affirmative is being reopened or any additional evidence is being led. However, in case any evidence comes during the cross-examination which may entitle the petitioners to rebut the said evidence, then it is always open to the petitioners to move appropriate application which has to be considered by the Court in accordance with law.

Finding no merit in the present civil revision, the same is, accordingly, dismissed.