

**CR-5058-2026 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****160****CR-5058-2026 (O&M)****Date of decision: 13.07.2026****Bank of India through its Principal Officer
and Constituted Attorney Sh. Ajay Kumar**

....Petitioner

Vs.

Sarabjit and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGERPresent: Mr. Rajiv Joshi, Advocate
for the petitioner.

HARSH BUNGER J. (Oral)

1 Prayer in the present civil revision petition is for setting aside the order dated 08.05.2026 (Annexure P-8) passed by learned Additional Civil Judge (Senior Division), Patiala, whereby an application under Order 18 Rule 17 read with Section 151 CPC filed by the petitioner/plaintiff seeking recall of witnesses PW1-Deepika Gupta and PW2-Geetanjali Dang for their cross-examination by the respondents has been dismissed.

2. Briefly, petitioner/plaintiff (Bank of India) is stated to have advanced a term loan to the respondents/defendants, which was not repaid and accordingly a civil suit (Annexure P-1) for recovery of Rs.14,55,130.84/- along with interest was filed by the plaintiff-Bank. The respondents contested the suit by filing their written statement (Annexure



P-2). It appears that after the framing of issues the petitioner/plaintiff lead its evidence wherein, the following witnesses were produced:-

- (i) PW1 – Deepika Gupta
- (ii) PW2 – Geetanjali Dang
- (iii) PW3 – Amit Rawal

2.1 It is stated that so far as PW1-Deepika Gupta and PW2-Geetanjali Dang are concerned, they submitted their examination-in-chief by way of their affidavits dated 12.08.2024 and 08.01.2025 respectively, and PW-2-Geetanjali Dang was partly cross-examined, whereas PW3-Amti Rawal was examined as well as cross-examined completely on 08.01.2025.

2.2 On 08.01.2025, when the matter was taken up by the learned Trial Court, further cross-examination of PW2-Geetanjali Dang was deferred for want of documents, accordingly the matter was adjourned for further cross-examination of PW2-Geetanjali Dang and also for remaining evidence of the petitioner/plaintiff. On the adjourned date i.e. 06.02.2025, learned counsel appearing for the petitioner/plaintiff requested for an adjournment on the plea that there are chances of compromise between the parties and therefore, PW2-Geetanjali Dang could not be cross-examined and the matter was adjourned so as to be put up before the National Lok Adalat on 08.03.2025.

2.3 On 08.03.2025, the matter was taken up before the National Lok Adalat, however, since nobody appeared on behalf of the parties, the matter was adjourned. It transpires that on 14.05.2025, learned counsel for the petitioner/plaintiff tendered an account statement as Exhibit P-10 and

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closed the plaintiff's evidence and the matter was fixed for evidence of the defendants.

2.4 Thereafter, the petitioner/plaintiff filed an application under Order 18 Rule 17 read with Section 151 CPC for recalling PW1-Deepika Gupta and PW2-Geetanjali Dang, so that the defendants may cross-examine them or formally record their decision to waive the cross-examination. The aforesaid application submitted by the petitioner/plaintiff was contested by the respondents/defendants by filing their reply.

2.5 The learned Trial Court upon consideration of the matter, dismissed the application under Order 18 Rule 17 CPC vide impugned order dated 08.05.2026 (Annexure P-8).

3. In the aforementioned circumstances, present civil revision petition has been filed before this Court.

4. I have heard the learned counsel for the petitioner and perused the paperbook with his able assistance.

5. The learned Trial Court has dismissed the application under Order 18 Rule 17 CPC filed by the petitioner/plaintiff vide impugned order dated 08.05.2026 (Annexure P-8), the relevant extract thereof reads as under:-

“3. Heard. Record perused. Perusal of record shows that the plaintiff bank has filed the present suit against defendants for recovery of the amount of Rs. 14,55,130.84/- alongwith interest as detailed in the head note of the plaint and defendants have also filed the written statement to the plaint. Prayer is made in the application to recall the witnesses respectively Deepika Gupta and Geetanjali, PW-1 and PW-2 on the ground that



witnesses were coming for the cross-examination but defendant has not cross-examined them and the evidence was closed thereafter. As per the record PW-1 Deepika and PW-2 Geetanjali were examined in chief on 12.08.2024 and appeared for the cross-examination on 19.05.2024. Thereafter plaintiff got examined PW-3 Amit Rawal on 08.01.2025 and PW Geetanjali was also partly cross-examined on that day. On 06.02.2025 PW Geetanjali appeared but thereafter she did not appear and counsel for plaintiff by suffering his own statement on 14.05.2025 had closed the evidence of the plaintiff bank by tendering the copy of statement of account. As per record, cross-examination of PW-3 Amit Rawal was completed which was also deferred earlier, but cross-examination of PW-2 Geetanjali was recorded partly and her further cross-examination deferred but she did not appear for further cross-examination. PW-1 Deepika has never appeared after 19.05.2024 for cross-examination as per record. The contention of counsel for plaintiff bank that defendant has not cross-examined the witnesses despite their coming, is not convincing because PW-2 Geetanjali was cross-examined partly and her cross-examination was deferred. But after that at one occasion, she appeared and her cross-examination was deferred. Neither there is any order for treating the cross-examination as Nil nor it is recorded that opportunity was not availed by the defendant. No reason has been assigned as to why witness Geetanjali did not appear after 06.02.2025 in the court. No reason for non-appearance of PW-1 Deepika has not been assigned on subsequent dates. As per record PW-3 Amit Rawal has been cross-examined by counsel for the defendant. Provisions of Order 18 Rule 17 of the CPC provides that court may at any stage of the suit recall any witness who has been examined and may put such questions to him as the court thinks fit. In my



view, before passing the order for recalling the witnesses reasons are to be recorded for doing the same. As per the contents of the application, plaintiff has not established on record the reasons for non appearance of the witnesses at the stage of evidence of the plaintiff. Moreover the application is moved at the stage of rebuttal evidence when the trial has almost been concluded. In these circumstances, the application at hand stands dismissed.”

5.1 A perusal of the above-extracted order would show that the petitioner/plaintiff had produced three witnesses; out of which PW1-Deepika Gupta had only submitted her examination-in-chief whereas PW2-Geetanjali Dang has submitted her examination-in-chief and was partly cross examined whereas PW3-Amit Rawal was completely examined as well as cross-examined. Thereafter, learned counsel for petitioner/plaintiff himself closed the plaintiff's evidence vide order dated 14.05.2025 (Annexure P-7) and the matter was listed for evidence of defendants, the relevant extract of the order reads as under:-

“Ld. Counsel for plaintiff tendered statement of account Ex.P10 and closed the plaintiff evidence. Now to come up on 26.05.2025 for evidence of defendant at own responsibility.”

6. Thereafter, the defendants led its evidence and the case was listed for rebuttal evidence (if any) and arguments. At this stage, the petitioner/plaintiff filed an application under Order 18 Rule 17 CPC for recalling PW1-Deepika Gupta and PW2-Geetanjali Dang, so as to enable the defendants to cross-examine them.

6.1 The learned Trial Court rejected the application by observing that no reason for non-appearance of the aforesaid witnesses at the stage of



the evidence of plaintiff was forthcoming and also that the application had been moved at the stage of rebuttal evidence when the trial has almost been concluded.

7. It has been laid time and again that a party to a suit is not at liberty to proceed with the trial at its leisure. A party has to be more serious and vigilant in prosecuting and producing evidence. Thus, deprecating grant of further opportunity to a party to lead evidence and branding the same as misplaced sympathy, where despite opportunities the said party had failed to lead evidence, Supreme Court in the case of ***Shiv Cotex v. Tirgun Auto Plast Private Limited and Others*** 2011 SCC Online SC 1175, has held as follows:

“xxx xxx xxx

14. *Second, and equally important, the High Court upset the concurrent judgment and decree of the two courts on misplaced sympathy and non-existent justification. The High Court observed that the stakes in the suit being very high, the plaintiff should not be non-suited on the basis of no evidence. But who is to be blamed for this lapse' It is the plaintiff alone. As a matter of fact, the trial court had given more than sufficient opportunity to the plaintiff to produce evidence in support of its case. As noticed above, after the issues were framed on 19-7-2006, on three occasions, the trial court fixed the matter for the plaintiff's evidence but on none of these dates any evidence was let in by it. What should the court do in such circumstances' Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute' Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward?*

15. *It is sad, but true, that the litigants seek-and the courts grant- adjournments at the drop of the hat. In the cases where*



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the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit... ”

8. In **Vadiraj Naggappa Vernekar (dead) through LR. v. Sharadchandra Prabhakar Gogate, 2009(2) RCR (Civil) 508**, Hon'ble Supreme Court had an occasion to consider similar claim, particularly, application filed under Order 18 Rule 17 and held as under :

"25. In our view, though the provisions of Order 18 Rule 17 Civil Procedure Code 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 omissions in the evidence of a witness who has already been examined.

XXX XXX XXX

28. The power under the provisions of Order 18 Rule 17 Civil Procedure Code 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 Civil Procedure Code.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 Civil Procedure Code 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.

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31. Some of the principles akin to Order 47 Civil Procedure Code may be applied when a party makes an application under the provisions of Order 18 Rule 17 Civil Procedure Code, but it is ultimately within the court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out."

9. The Coordinate Bench of this Court in the case of **“Neeraj Jindal Vs. Manju”, CR No.5243 of 2019, decided on 30.08.2019** had observed that the provision of Order 18 Rule 17 CPC which is with respect to recalling and re-examining the witnesses, cannot be invoked by a private party as the aforesaid provision is meant only for the convenience of the Court and that the said powers can only be exercised by the Court according to its convenience and the parties to the litigation cannot invoke the same. The relevant portion of the said judgment is reproduced hereinbelow:-

".....Even otherwise, process of the Court in terms of Order 18 Rule 17 CPC cannot be invoked by the private party as the aforesaid provision is meant only for convenience of the Court. The Court at any stage can re-call any witness who has



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been examined and may put such questions to him as the Court thinks fit but the said exercise does not permit a party to reexamine any witness or to fill lacuna in the case.

*In view of ratio laid down by Hon'ble Apex Court in **K.K. Velusamy vs N. Palanisamy, (2011) 11 SCC 275 and Ratti Ram vs Mange Ram (D) through LRs and others, 2016 (2) RCR (Civil) 464**, powers under Order 18 Rule 17 CPC can only be exercised by the Court according to its convenience and the party to the litigation cannot invoke the said provision.*

*The aforesaid principle was also reiterated in **Vadiraj Nagappa Vemekar vs Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410**.*

For the reasons recorded hereinabove, I do not see any justification to interfere in the impugned order which is not found to be suffering from any error of jurisdiction.

This revision petition is accordingly, dismissed.

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10. Considering the peculiar facts and circumstances of this case and keeping in view the judicial pronouncements noticed above; I am of the considered view that since, the case is at the final stage of litigation; I see no cogent reason for reopening the case at the present stage; especially when the petitioner/plaintiff has been demonstratively negligent in leading its evidence by not presenting its witnesses PW1-Deepika Gupta and PW2-Geetanjali Dang for their cross-examination at the relevant stage of the trial.

11. Another ground put forth by the learned counsel for the petitioner is that his counsel before the learned Trial Court was negligent in pursuing the matter and on that account, he could not lead his evidence.



12. I have considered the aforesaid plea raised on behalf of petitioner, however suffice it to say that such a plea cannot come to the aid of the petitioner. A litigant is under a bounden duty to remain vigilant about proceedings initiated at his own instance and cannot be permitted to shift the entire blame upon the Advocate so as to overcome the consequences of his own inaction. After instituting proceedings, a party cannot be allowed to remain dormant and thereafter seek indulgence by attributing negligence solely to his/her counsel. The attempt to put entire responsibility upon the Advocate is apparently an afterthought and a device to avoid the legal consequences arising out of petitioner’s own persistent default, in presenting its witnesses for cross-examination; which cannot be countenanced in law.

13. No other argument has been raised.

14. In view of the above discussion, I find no merit in the present civil revision petition and the same is accordingly **dismissed**.

15. All the pending application(s), if any, shall also stand closed.

13.07.2026
Ankit

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No