

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R. No. 402 of 2015 (O & M)

Date of decision: 27.01.2015

Neelam Goel

....Petitioner(s)

Versus

Satish Chander Goel

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Vivek Suri, Advocate,
for the applicant-petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 1824-CII of 2015

Application for placing on record zimini orders passed by the
Family Court is allowed, subject to all just exceptions.

The said orders are taken on record.

C.R. No. 402 of 2015

Challenge in the present revision petition filed under Article
227 of the Constitution of India is to the order dated 03.01.2015 (Annexure
P-5) passed by the District Judge, Family Court, Ambala whereby, the
evidence of the petitioner-wife who was defending the proceedings had
been closed vide the said order. The reasoning given by the Family Court is
that RW-2 has not come present though the case has been fixed for cross
examination and last opportunity had been granted and she was to put in
appearance on the said date and since the case pertains to the year 2011 and
pending since long for cross examination of the said witness, the case was
adjourned for rebuttal evidence, if any and arguments.

Counsel for the petitioner has submitted that the case is now

fixed for today. He further has referred to the zimini orders to show that witness was present earlier but the Court was on leave and in such circumstances, the order was not justified. The witness had to go to Goa for the treatment of her son and in support, letter written to the Family Court dated 27.12.2014 was also referred to, to show that she could not appear on 03.01.2015, as undertaken. The tickets showing her return on 06.01.2015 have been appended as Annexure P-4.

A perusal of the zimini orders would go on to show that the said witness had tendered her affidavit on 09.09.2014. Her part cross examination was conducted but further cross examination was got deferred and the case was adjourned to 07.10.2014 for further cross examination by the counsel for the husband. On the said date, she could not be present and the case was adjourned to 03.11.2014 and she could not come present even on the said date. Accordingly, last and final opportunity was granted, failing which, her cross examination was to be treated as Nil. The case was adjourned to 15.11.2014 and on the said date, the Presiding Officer of the Family Court was on leave and the file was taken up on 12.11.2014 and adjourned to 29.11.2014. However, the witness put in appearance on 15.11.2014 from Delhi and her presence was marked by the other Court on account of making of an application by counsel for the petitioner-wife. On the said date also, the Presiding Officer was not holding Court but the witness was also not present on the said date. Thereafter, the case was taken up on 17.12.2014 and she was again not present on account of the fact that her son was admitted in the hospital at Goa.

Counsel for the petitioner stated that she could not put in appearance for her cross examination and the Court on 17.12.2014

adjourned the case to 03.01.2015 with the condition that her cross examination would be treated as Nil and no further witness shall be allowed to be examined in the present case as numerous opportunities had been granted. Resultantly, the impugned order was passed on 03.01.2015 since the said witness was not present.

Counsel for the petitioner submits that in such circumstances, though the witness was not present on 3 effective occasions but submits that since she has to come from Delhi and cross examination was deferred on the request of the other side, the other side can be compensated with payment of costs and it is submitted that the said witness is necessary witness and the petitioner would be seriously aggrieved if the complete cross examination is not conducted. It is submitted that on one of the occasions, the witness had come but the Court was on leave and even her presence was got marked. It is further submitted that the other witness, the Notary from Panchkula is also necessary.

In such circumstances, keeping in view the basic principle that the rules of procedure are hand-maids of justice and not its mistress, sufficient cause has been shown due to which the petitioner could not produce the witness as the son of the witness is allegedly ailing in Goa and she could not come back and came back 3 days later as per the tickets attached. It is settled principle that a party should be given an effective chance to defend her case, specially where serious civil consequences are involved and this Court is of the opinion that the other side can be adequately compensated by payment of costs.

In view of the above, this Court is of the opinion that the present petition is liable to be allowed. No notice is being issued to the

respondent as it will unnecessarily entail unnecessary expenses and delay the matter. Even if he puts in appearance, the result would remain the same. However, it is open to the respondent to file an appropriate application for recalling of the order in case there is any concealment of fact.

Accordingly, the present revision petition is allowed and the order dated 03.01.2015 is set aside, subject to payment of ₹3,500/- as costs to be paid to the opposite party for delaying the proceedings. The trial Court shall give two effective opportunities to the petitioner to produce the witness Smt. Santosh Gupta and the Notary from Panchkula which is supposed to be another necessary witness.

27.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE