

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

(234)

**CR No.461 of 2015 (O&M)
Decided on: April 20, 2015.**

Balwinder Kaur

.... Petitioner

Versus

Tilak Raj

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. M.S. Dhami, Advocate,
for the petitioner.

Ms. Harpreet Kaur, Advocate,
for the respondent.

M.M.S. BEDI, J (ORAL)

This is a revision petition under Article 227 of the Constitution of India questioning the legality of order dated 22.04.2014 passed by Additional District Judge, Hoshiarpur in a divorce petition treating the cross-examination of respondent-husband as “NIL... Opportunity given.”

Learned counsel for the petitioner has drawn attention of this Court to the interim order dated 27.01.2014 when respondent-husband appeared as PW-1 and his cross-examination was deferred for want of certain documents. On 17.02.2014 no evidence of the husband-respondent was present as such case was deferred to 03.03.2014. On 03.03.2014 again no evidence of the husband-respondent was present as such case was adjourned to 24.03.2014. On 24.03.2014 no evidence of the husband-respondent was present as such case was deferred to 22.04.2014.

It is contended by learned counsel for the petitioner that on 22.04.2014 when the case was called, the counsel for the petitioner-wife was busy in some other Court as such the counsel could not reach at the time when the case was called. The trial Court ordered that cross-examination be treated as "NIL". An application was filed on 02.05.2014 for cross-examination of the husband but the said application was disposed of as withdrawn on 06.01.2015. The petitioner wife changed her counsel in the divorce petition on account of inability of her earlier counsel in appearing in the Court at the time of cross-examination.

Learned counsel for the respondent has opposed the revision contending that sufficient opportunities had been granted to the petitioner-wife to cross-examine the respondent but the opportunities having not been availed and the application for cross-examination filed on 02.05.2014, having been withdrawn, the petitioner cannot seek an opportunity to cross-examine the husband-respondent.

Learned counsel for the respondent submits that wrong submission has been made regarding change of the counsel as the petitioner was being represented by the same counsel, who has been representing her on 22.04.2014.

I have heard learned counsel for the petitioner as well as learned counsel for the respondent.

The provisions of Civil Procedure Code provide for a situation when a witness is present in the Court and the pleader for other party is not present or though present in the Court, is not ready to examine/cross-examine the witness. In this context, reference can be made to Order 17 Rule 2 (e) which reads as under:-

“ ORDER XVII-ADJOURNMENTS

1. xxxx

2. xxxx

(a) xxxx

(b) xxxx

(c) xxxx

(d) xxxx

(e) *where a witness is present in Court but a party or his pleader is not present or the party of his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid”.*

The trial Court in view of above said enabling provisions seems to have ordered that the husband-respondent after examination-in-chief, was not cross-examined despite opportunities as such it has been recorded that cross-examination was “NIL” .

Perusal of the interim order dated 22.04.2014 indicates that respondent Tilak Raj was present in the Court since morning but he was not cross-examined by the counsel for the petitioner despite available opportunity, as such cross-examination of Tilak Raj was treated as “NIL... Opportunity given.”

Perusal of the interim orders dated 27.01.2014, 17.02.2014, 03.03.2014 and 24.03.2014 indicate that no evidence of the husband was present. The presence of the husband was also not recorded in these interim orders. It is presumed that husband-respondent was present on 22.04.2014.

The trial Court could have waited for the appearance of the counsel or in the alternative could have adjourned the case subject to imposition of costs as per provisions of Order 17 Rule 2 CPC. The provisions under Order 17 Rule 2 (e) CPC should be adopted when the Court is satisfied that there has been extra ordinary negligence or casual approach on the part of the opposite party indicating intentional evasive approach in examination or cross-examination of the witnesses present in the Court. In a matrimonial case where a bold decision is to be taken by the Court on the basis of the allegations and counter allegations having strong bearing on the future life of the parties, it is always expedient in the interest of justice, to permit cross-examination of a litigating party especially when the witness is husband or wife himself/herself. In the present case, the cross-examination of husband would have not only given an opportunity to the petitioner-wife to enable the Court to elicit truth or to impeach the credibility of the testimony of the respondent but at the same time would have enabled the Court to arrive at a just conclusion as the cross-examination by the opposite party enables the Court to fairly decide the matter.

In the aforesaid circumstances, the wife deserves to be given an opportunity to cross-examine the husband. The petition is allowed. The order dated 22.04.2014 is hereby set aside whereby the cross-examination of Tilak Raj is treated as “NIL... Opportunity given.”

It has been informed that the next date of hearing before the trial Court is 28.04.2015.

It is ordered that the petitioner will pay a costs of Rs.5,000/- to the respondent on 28.04.2015. The respondent will appear in the Court on 28.04.2015 for cross-examination. The petitioner through her counsel will

be permitted to cross-examine him on said date on payment of costs of Rs.5,000/-. In case, the respondent is unable to appear on that day for any good reason, the trial Court shall give another date within a period of one month to enable him to appear in the Court. In that eventuality the costs of Rs.5,000/- will be paid to him on the date so fixed for his appearance and he would be cross-examined by the petitioner through her counsel positively on said date. No other opportunity for cross-examination will be granted to the petitioner. In case the costs is not offered on the date fixed when respondent-husband is present for cross-examination, this petition would be deemed to have been dismissed.

(M.M.S. BEDI)
JUDGE

April 20, 2015
harsha