

CRR-470 of 2015(O&M)
Date of Decision: 13.02.2015

Priya Jain

---Petitioner

versus

Pankaj Jain and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sachin Mittal, Advocate
for the petitioner**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present petition lays challenge to the order dated 19.1.2015 passed by the Additional Sessions Judge, Gurgaon whereby the appeal preferred by the respondent against order dated 7.3.2013 passed by the Judicial Magistrate Ist Class, Gurgaon dismissing application dated 28.7.2012 of the respondents for providing an opportunity to cross examine the witnesses PW1 and PW2 has been allowed and the respondents have been given an opportunity to cross examine these witnesses.

Counsel for the petitioner contends that the witnesses PW1 and PW2 tendered into evidence their affidavit on 15.4.2010 and 28.5.2010 and the respondent never pressed their claim for cross examination of witnesses till filing of application dated 28.7.2012 after an inordinate delay of more than 02 years. It is further argued that during the intervening

period, the respondent filed 3-4 applications and after disposal of those applications, the present application was filed with a mala fide intent to prolong decision of the case. It is vehemently argued that keeping in view conduct of the respondents, the court in appeal has committed a serious error in accepting prayer of the respondents permitting them to cross examine the witnesses.

I have heard counsel for the petitioner and perused the records.

Indisputably, other witnesses examined by the petitioner were cross examined by the respondent. If the respondent or his counsel did not exercise the right to cross examine the witnesses at an appropriate time when they tendered their affidavits in evidence, the same does not stand to deprive him of a valuable right to cross examine the witnesses.

The appellate court while allowing prayer of the respondent has burdened him with costs of Rs. 5000/-. Had the petitioner conceded to right of the respondent to cross examine the witnesses before the trial court itself, it could take care of delay which has occurred due to pendency of the revision petition before the court in appeal and the petitioner could avoid unnecessary inconvenience of coming to this court by challenging order passed by the appellate court. I do not find any error much less illegality in the impugned order as would call for intervention.

Dismissed.

(REKHA MITTAL)
JUDGE

13.02.2015
PARAMJIT