

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

**CR No.1859 of 2016 (O&M)
Decided on: 11.03.2016**

Urmil

....Petitioner

Versus

Rajiv Kumar Gupta

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. Rajesh Lamba, Advocate
for the petitioner.

REKHA MITTAL J. (Oral)

The present petition has been directed against orders dated 15.10.2015 (Annexure P-1) and dated 05.11.2015 (Annexure P-4) passed by the Civil Judge (Junior Division), Gurgaon, whereby cross-examination of Rajiv PW-6 has been treated 'NIL' and application filed for recalling the witness, Rajiv for cross-examination has been dismissed.

Counsel for the petitioner/defendant fairly concedes that there was remiss on the part of counsel earlier representing the petitioner to cross-examine Rajiv PW-6 despite number of opportunities granted for the purpose, detailed in Para 5 of the order dated 05.11.2015. It is further submitted that the petitioner was kept in dark by her earlier counsel in regard to his failure to cross-examine Rajiv PW-6. A serious prejudice would be caused to

the petitioner in case she is not allowed to cross-examine Rajiv PW-6, the plaintiff in the case as in absence of cross-examination of the plaintiff the facts deposed by him reiterating his stand in the plaint would be accepted as correct and read against the petitioner. According to counsel, the respondent can well be compensated for delay likely to be occur on account of failure of counsel for the petitioner to cross-examine Rajiv PW-6 at an appropriate stage of proceedings. The last submission made by counsel is that the petitioner has changed her counsel and in case one effective opportunity is allowed, cross-examination of Rajiv PW-6 would be concluded on the date to be fixed by the trial Court for the said purpose.

I have heard counsel for the petitioner and perused the records particularly the orders impugned.

A bare reading of the detailed order passed by the trial Court would evident that counsel representing the petitioner before the trial Court failed to cross-examine the witness despite sufficient opportunities allowed for the purpose. Rajiv PW-6 is the plaintiff in the case and in case the petitioner is not permitted to cross-examine Rajiv PW-6, it may have serious repercussions and consequences for the petitioner. Keeping in view the principles of natural justice coupled with the fact that the petitioner should not be allowed to suffer for in-action on the part of her counsel in regard to his failure to cross-examine the witness despite several

opportunities granted for the purpose, the petition is allowed, the petitioner is afforded only one opportunity to conclude cross-examination of Rajiv PW-6 subject to costs of Rs.15,000/-to be deposited in the trial Court well before the date fixed for the purpose and the same shall be released in favour of the respondent/plaintiff.

Before parting with this order, it is pertinent to mention that the petition has been disposed of without notice to the respondent in order to avoid un-necessary inconvenience and expenses. However, the respondent shall be at liberty to file an appropriate application in case he has any grievance to express.

Disposed of.

(REKHA MITTAL)
JUDGE

11.03.2016

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