

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

-.-

CR 2073 of 2016 (O&M)
Date of decision: 18.03.2016

Sanjay and another

..... Petitioners

Versus

Savita and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Navneet Singh, Advocate
for the petitioners

-.-

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. (Oral)

The present petition lays challenge to the order dated 01.03.2016 (Annexure P2) passed by the trial Court, dismissing an application of the petitioners/defendants for recalling Savita (PW1) for further cross examination.

Counsel for the petitioners would submit that Savita could not be cross examined on 18.11.2015 and 23.12.2015, the dates on which she was present for her further cross examination as on one of the occasions counsel for the petitioners/defendants could make himself available due to circumstances beyond his control. It is further submitted that a serious prejudice would be caused to the petitioners in case they are not permitted

to conduct further cross examination of the respondent/plaintiff because in that eventuality, her statement which is reproduction of the stand taken in the plaint may be treated as admitted by the defendants/petitioners. Another submission made by counsel is that failure of counsel to further cross examine the witness on two occasions should not be allowed to operate to the detriment of the petitioners when otherwise the rules of procedure are the handmaid of justice. The last submission made by counsel is that the respondent/plaintiff has not alleged any mala fide on the part of the petitioners/defendants in regard to their failure to further cross examine the respondent/plaintiff on the aforesaid two dates. Counsel has submitted that the case is pending for 19.03.2016 for evidence of the petitioners/defendants.

I have heard Counsel for the petitioners and perused the record, particularly the impugned order.

No doubt, counsel representing the petitioners before the trial Court did not cross examine the plaintiff/respondent No. 1 despite two opportunities available to him on 18.11.2015 and 23.12.2015, but at the same time, there is no allegations raised by the respondent/plaintiff that failure to cross examine Savita (PW1) was due to mala fide much less to prolong the trial. Failure of the petitioners to cross examine Savita (PW1), the plaintiff in the case, would be of serious consequences and implications at the time of final disposal of the suit. The case is still pending for evidence of the petitioners/defendants and is fixed for 19.03.2016.

In the given facts and circumstances of the present case, it would be expedient in the interest of justice if the petitioners are allowed

another opportunity to conclude cross examination of Savita (PW1) subject to condition of payment of Rs.10,000.00 as costs, payable to Savita (PW1) at the time of her appearance in the Court and before starting her further cross examination

Keeping in view the nature of the order to be passed, the petition is being disposed of without notice to the respondents but they would be at liberty to file an appropriate application in case they have any grievance to express.

With these observations, the petition stands disposed of.

(Rekha Mittal)
Judge

18.03.2016
mohan bimbura