

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

CR No.5017 of 2016(O&M)

Date of decision:8.8.2016

Kavita Chakarvarty

....Petitioner

VERSUS

Annu and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Tribhuvan Dahiya, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against orders dated 05.03.2016 and dated 21.07.2016 (Annexure P-1 colly.) whereby evidence of the petitioner has been closed by order of the Court and application for recalling that order has been dismissed respectively.

Counsel for the petitioner would contend that the petitioner has been impleaded as defendant No.3 as Head of the Department of Economics, Maharishi Dayanand University (in short 'MDU'), Rohtak impleaded as such as defendant No.1. At present, the petitioner is working on deputation as a Registrar, BPS Mahila Vishwavidyalaya, Khanpur Kalan, Sonapat. The petitioner stepped into the witness box on 30.07.2015, tendered into evidence her affidavit by way of examination in chief and was cross-examined at length by counsel opposite but her further cross examination was deferred for 07.09.2015. She could not appear before the Court on 07.09.2015 but appeared in person on 12.10.2015 and 16.11.2015 but her remaining cross examination was not conducted by counsel opposite and was deferred at his request. It is further submitted

that the petitioner could not appear before the trial Court on 21.12.2015, 21.01.2016, 24.02.2016 and 05.03.2016 for the reasons detailed in sub para (i) to (iv) of para 6 of the petition. It is vehemently argued that non-appearance of the petitioner for her further cross examination was not intentional but due to reasons and circumstances beyond her control. It is further submitted that as the petitioner appeared for her cross examination on two occasions but was not cross examined by counsel opposite, the petitioner should not be put to irreparable loss due to non-conclusion of cross examination as in case her cross examination is not concluded, the entire effort to examine and cross-examine her on 30.07.2015 and her effort for cross examination to be concluded on 12.10.2015 and 16.11.2015 would go waste and her statement would not be read in evidence for disposal of the suit. In addition, it is further submitted that the petitioner is the only witness examined by the defendants to contest claim of the plaintiff/respondent.

I have heard counsel for the petitioner, perused the paper book particularly the orders impugned and various zimini orders reproduced on pages 3 to 7 of the paper-book.

The submissions made by counsel for the petitioner with regard to appearance of the petitioner in the Court on three occasions i.e. 30.07.2015, 12.10.2015 and 16.11.2015 is clearly borne out from the records. The petitioner has clearly and categorically explained the circumstances which stood in her way to ensure her presence before the Court w.e.f. 21.12.2015 to 05.03.2016, the dates fixed by the trial Court.

In the given facts and circumstances, it is expedient in the interest of justice that the petitioner is allowed one effective opportunity to tender herself in the witness box for her further cross examination.

In view of what has been discussed hereinabove, the petition is allowed and the petitioner is provided with one opportunity for her further cross examination subject to payment of costs of Rs.10,000/- to be deposited with the trial Court payable to the respondent /plaintiff as per rules. The trial Court would fix a date for her further cross examination and in case the petitioner fails to ensure her presence before the Court on that day, the petition shall be deemed to be dismissed.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent/plaintiff in order to save her from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case she has any grievance to express.

AUGUST 8, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no