

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

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CR 8440 of 2017 (O&M)
Date of decision: 04.12.2017

Savitri Devi *Petitioner*
Versus
Harish Kumar *Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Nonish Kumar, Advocate
for the petitioner

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Rekha Mittal, J. (Oral)

CM 25979 CII of 2017

Allowed as prayed for. Annexure P6 (colly) is taken on record.

Main case

The present petition directs challenge against order dated 22.11.2017 (Annexure P5) passed by the Additional Civil Judge (Senior Division), Karnal whereby application of the petitioner for additional evidence has been dismissed.

Counsel for the petitioner would submit that the respondent/plaintiff has filed a suit for possession by way of specific performance of agreement to sell dated 04.07.2013 in respect of residential house. The petitioner is not keeping good health and for that reason, she could not examine herself. The petitioner has already examined Raj Kumar (DW1) and Ranjit Singh (DW2) was partly examined. It is argued that as

opposite counsel did not conduct cross examination of Ranjit Singh (DW2) on the day he was examined in chief, the petitioner should not be allowed to suffer for the same. Further argued that son in law of the petitioner died on 26.10.2017, therefore, it was not feasible to appear in the Court on 27.10.2017. It is prayed that the petitioner may be allowed one opportunity to tender herself into the witness box and produce Ranjit Singh (DW2) for his cross examination.

Be that as it may, perusal of the various zimini orders placed on record would make it evident that the petitioner/defendant availed number of opportunities for leading evidence. Nevertheless the trial Court has not rejected plea of the petitioner that she has serious health issues. Counsel for the petitioner is right in his submission that had Ranjit Singh (DW2) been cross examined the day he was examined in chief, his statement would have been completed.

Taking into consideration the principle of natural justice coupled with serious consequences likely to ensue for the petitioner in case she is not permitted to examine herself and Ranjit Singh (DW2) by setting aside the order dated 27.10.2017 closing evidence, the petitioner is allowed one effective opportunity for cross examination of Ranjit Singh (DW2) and examination of herself subject to the following conditions:-

- i) The trial Court shall provide one effective opportunity for cross examination of Ranjit Singh (DW2) and examination of petitioner herself;
- ii) The petitioner shall ensure presence of Ranjit Singh as well as herself on the date fixed; and
- iii) The petitioner will prepare a demand draft of Rs.5,000.00 in the name of the respondent/plaintiff and

hand over the same to the respondent or his counsel on
the date fixed for evidence.

Disposed of accordingly.

(Rekha Mittal)
Judge

04.12.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No