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

**CR No.5271 of 2018 (O&M)
Date of Decision:-11.09.2019**

Rani Gupta and another

...Petitioners

Versus

Rajesh Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Ravi Dutt Sharma, Advocate,
for the petitioners.

Mr. Rishi Nijhawan, Advocate,
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1] Petitioners have challenged the orders dated 09.07.2018 (Annexure P-14) and 16.07.2018 (Annexure P-15) passed by Civil Judge (Sr. Divn.), Kaithal, vide which, exemption from personal appearance of PW-Vikas was granted subject to payment of costs of ₹500/- on 09.07.2018 and evidence of defendant No.1 was closed by order of the Court on 16.07.2018.

[2] On 09.07.2018, previous cost(s) was paid vide receipt No.071740 dated 09.07.2016. The petitioner No.2-Vikas was

abroad. His personal appearance was exempted for that date only subject to further costs of ₹500/- to be deposited in District Legal Services Authority, Kaithal, otherwise, his evidence was to be closed by order of the Court.

[3] As per entries in the passport (Annexure P-12), petitioner No.2 went abroad on 15.06.2018 and came back on 23.07.2018. Since, the petitioner-Vikas was not present in the Court, therefore, on 16.07.2018, i.e. the adjourned date from 09.07.2018, the evidence of the petitioners was closed by order of the Court.

[4] At the time of issuance of notice of motion on 16.08.2018, following order was passed:

"Learned counsel for the petitioners submits that personal exemption of Vikas/petitioner No.2 was sought on 09.07.2018 on the ground that he was abroad and would return only on 23.07.2018. The said application was allowed after receiving costs vide order dated 09.07.2018, but the case was adjourned for 16.07.2018 for cross examination of Vikas/DW 1 at his own responsibility subject to further costs of Rs.500/- to be deposited in DLSA, Kaithal. The order was also made that in the event of failure on his part, evidence of defendant No.1 was to be closed by order of the Court. On 16.07.2018, the impugned order was

passed on the ground that neither DW 1 has come present, nor cost has been paid. The evidence of defendant No.1 was closed by order of the Court. Learned counsel submits that there is no legal evidence of the defendant except his examination-in-chief and there was no occasion for the trial Court to adjourn the case for rebuttal. Petitioner has returned only on 23.07.2018. The costs could not be paid in the absence of the petitioner. Learned counsel seeks one opportunity for cross examination of DW 1 subject to payment of adequate costs. Notice of motion for 04.10.2018. Till the next date of hearing, trial Court is directed to adjourn the proceedings beyond the date fixed by this Court."

[5] After hearing learned counsel for the parties, it has been noticed that after coming to India on 23.07.2018, the petitioners filed the present revision petition as there was no occasion for him to approach the trial Court after closure of his evidence. The petitioner-Vikas showed his willingness to compensate the plaintiffs by way of adequate costs.

[6] In view of peculiar facts and circumstances of the case, in which, evidence of the petitioners was ordered to be closed on 16.07.2018 as he was not in India even for the purposes of paying further costs of ₹500/- as per order dated 09.07.2018. The admission and denial on behalf of the parties

may give rise to arguable points during the course of arguments but I deem it appropriate to grant one opportunity to the petitioner-Vikas to facilitate his cross-examination by the plaintiffs by appearing in the Court on a date to be fixed by the Trial Court subject to payment of costs of ₹40,000/- to be paid to the plaintiffs. The said cost(s) is inclusive of the cost(s) earlier imposed. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context. It is made clear that indulgence is being granted for cross examination of DW-1 and for leading documentary evidence by the petitioners on the date fixed.

[7] For the reasons recorded hereinabove, the present revision petition stands disposed of.

11.09.2019

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**(Raj Mohan Singh)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No