

CR No.785 of 2019

112

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

CR No.785 of 2019
Date of Decision : 28.02.2019

Indu Bala

...Petitioner

Versus

Arvind Kumar

....Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. Naveen Thakur, Advocate for
Mr. Rahul Deswal, Advocate for the respondent.

B.S.WALIA, J. (Oral)

1. Mr. Naveen Thakur, Advocate has put in appearance on behalf of Mr. Rahul Deswal, Advocate and filed power of attorney on behalf of the respondent. The same is taken on record.

2. Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside order dated 24.01.2019 (Annexure P/4), whereby the right to cross-examine PW3, Arvind Kumar and PW4, Satish Sharma, was treated as nil.

3. A perusal of the impugned order reveals that opportunity to cross-examine PW3, Arvind Kumar and PW4, Satish Sharma, was given to the petitioner but was treated as nil, whereupon the case was adjourned to 27.02.2019 for remaining evidence of the respondent-plaintiff.

4. Brief facts of the case leading to the filing of the instant revision petition are that PW3, Arvind Kumar and PW4, Satish Sharma

were present for cross-examination but previous costs of ₹500/- each had not been paid to the witnesses instead request for deferring their cross-examination was made by petitioner-Indu Bala appearing in person on the ground that her counsel was not available. The learned trial Court by taking note of the fact that examination-in-chief of the aforesaid witnesses was recorded on 03.10.2018 on which date their cross-examination was deferred on request of learned counsel for the petitioner/defendant, where after on the next date of hearing i.e. 15.11.2018, PW3 and PW4 were again present for their cross-examination but their cross-examination was deferred on request of proxy counsel for the petitioner/defendant, that on next date of hearing i.e. 19.12.2018, both witnesses were again present for their cross-examination but instead of cross-examining said witnesses, an application under Order 7 Rule 11 read with Section 151 CPC was filed by the counsel for the petitioner/defendant, which was considered and dismissed by the learned trial Court on the same date whereafter another request was made for deferring the cross-examination of the aforesaid witnesses, which was allowed subject to payment of costs of ₹500/- each to be paid by the petitioner-defendant to the witnesses and thereafter, as has been noted above, on 24.01.2019, petitioner-defendant appeared in person and requested for deferring the cross-examination of the aforesaid witnesses on the ground of non-availability of her counsel, whereupon the learned trial Court was pleased to observe that the petitioner-defendant was intentionally delaying the proceedings of the case. Accordingly the petitioner/defendant's opportunity to cross-examine the aforesaid witnesses was treated as, opportunity given, cross-examination NIL.

5. Learned counsel for the petitioner contended that the petitioner's husband was a heart patient and had suffered heart attack in the year 2015 and had again suffered heart attack on 03.12.2018 for which he was admitted in Medanta Hospital, Gurugram where he underwent surgery on 04.12.2018 and during surgery steel wires were put to unite the sternum and he was advised bed rest for three months as per certificates, Annexure P/3 (colly). Learned counsel further states that counsel for the petitioner/defendant before the learned trial Court gave up law practice and shifted to Canada, whereupon the petitioner/defendant appeared in Court on 24.01.2019 and sought an adjournment by bringing, the aforementioned aspect of the matter as also of her husband having suffered from coronary heart ailment and having undergone surgery at Medanta Hospital, Gurugram on 04.12.2018, to the notice of the learned trial Court as she could not have anticipated the kind and stage of hearing and purpose for which the case was listed for on 24.01.2019. Learned counsel contends that despite the facts of the case going to show that sufficient cause was made out for not depositing the costs and for seeking an adjournment for conducting cross-examination of PW-3 and PW-4 in terms of Full Bench decision of this Court in Anand Parkash vs. Bharat Bhushan Rai and another 1981 AIR (Punjab) 269, the learned trial Court rejected the request. Learned counsel contends that the petitioner/defendant has already moved an application under Section 148 CPC for extension of time for depositing of costs as well as for recalling of order dated 24.01.2019 and for grant of an opportunity to conduct cross-examination of the aforesaid witnesses.

CR No.785 of 2019

6. Per contra, learned counsel for the respondent contended that the impugned order was as per law and did not warrant interference.

7. I have considered the submissions of learned counsel for the parties.

8. It has not been disputed that the petitioner's husband underwent heart surgery on 04.12.2018 on account of having suffered heart attack on 03.12.2018 for which he was advised bed rest for three months as also of the petitioner's counsel having given up law practice and shifted to Canada. It is also not in dispute that the petitioner/defendant has already moved an application under Section 148 CPC for extension of time for depositing of costs as well as for recall of order dated 24.01.2019 and for grant of an opportunity to conduct cross-examination of PW3 Arvind Kumar and PW4 Satish Sharma respectively.

9. Without commenting upon the merits of the case, the revision petition is disposed of at this stage with liberty to the petitioner to pursue the application filed before the learned trial Court under Section 148 CPC as also for recall of order dated 24.01.2019. Needless to mention, in the eventuality of the petitioner being aggrieved by orders passed by the learned trial Court on aforesaid applications, the petitioner would be at liberty to seek redress in respect thereto in accordance with law.

10. Revision petition disposed of in the aforementioned terms.

(B.S.WALIA)
JUDGE

28.02.2019

rajesh.k.khurana

Whether speaking/reasoned
ddWhether reportable

: Yes/No

: Yes/No