

S.No.124

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

CR No.1735 of 2020 (O&M)

Date of Decision:16.03.2020

Toshani Naik Petitioner

Vs.

Sh. Subhranta Naik Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.K.Tripathi, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition filed under Article 227 of the Constitution of India challenging the order dated 05.03.2020, whereby, the evidence of the respondent has been closed without cross-examination of witness of the respondent by the petitioner.

The facts giving rise to the present petition are that the respondent- husband had filed a divorce petition against the petitioner. The same was allowed. However, the appeal against the decree of divorce passed by the trial Court is pending before this Court. Thereafter, the petitioner had filed an application under Section 6 of Hindu Minority and Guardianship Act for custody of the minor son. In that application, the evidence of the petitioner had already been completed; whereafter; the evidence of the respondent had started. However, before the cross-examination of witness of the respondent could be completed, the evidence of the respondent has been closed by order of the Court, thereby; denying the opportunity to the petitioner to cross-examine the witness(es) of the respondent.

It is contended by the counsel for the petitioner that the petitioner has not committed any default. It is only because of the counsel's mistake that the witness of the respondent could not be cross-examined on some dates. Otherwise, the petitioner is the applicant in the main case, therefore, she would be the last person to delay the proceedings as such. Still further, it is submitted that the petitioner would complete the cross-examination of the said witness(es) if she is granted opportunity for that purpose. Hence, it is submitted that the order passed by the Court below deserve to be set aside.

Having heard the learned counsel and having perused the file, this Court finds that the petitioner has been granted several opportunities to cross-examine the witness(es). The record also shows that the petitioner has repeatedly changed the counsels. Therefore, the assessment of the Court below that the petitioner might be seeking time for cross-examination only, as the tactics for delaying the proceedings, is not wholly unjustified. However, the fact remains that it is the application filed by the petitioner only, which the trial Court is considering. Therefore, it would be in the interest of justice, if she is granted one more effective opportunity to cross-examine the witness(s) of the respondent, however, by putting her to some appropriate financial burden.

In view of the above, the impugned order is quashed and the present petition is disposed of with a direction to the trial Court to grant one effective opportunity to the petitioner to cross-examine the witness(s) of the respondent subject to payment of Rs.2,000/- as cost. The cost is ordered to

be deposited with the District Legal Services Authority, Gurugram.

However, it is clarified that the petitioner shall be granted opportunity to cross-examine the witness(es) of the respondent only after she produces before the trial Court, the receipt of having deposited the cost; as ordered above.

March 16, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No