

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

209

CR No.1463 of 2021 (O&M)
DATE OF DECISION : 20th SEPTEMBER, 2021

Rakesh Kumar

.... Petitioner

Versus

Kiran Bala

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.S. Budhwar, Advocate for the petitioner.

Ms. Divya Arora, Advocate for the respondent.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 12.07.2021 passed by the Additional Principal Judge (Family Court), Karnal (for short, the trial Court), vide which the defence of the petitioner was struck off.

As per office report, demand draft Nos.329142 and 329143 amounting to Rs.16,200/- and Rs.15,000/- respectively, have been sent to the respondent along with the summons; in pursuance of order dated 05.08.2021, and the same were received by her along with the summons.

It is submitted by learned counsel for the petitioner that the petitioner has already completed his evidence. The counsel for the petitioner before the Court below; has been duly attending the proceedings; before the trial Court. However, on the day, when the impugned order was passed, the counsel for the petitioner was arguing the case before some other Court,

therefore, he could not come present to cross examine the respondent's witnesses. Hence, the absence of the counsel for the petitioner before the trial Court to cross examine the witnesses was not intentional one. Hence, the petitioner deserves to be granted at least one opportunity to cross examine the witnesses of the respondent.

On the other hand, learned counsel for the respondent has submitted that the petitioner is habitual defaulter in payment of the maintenance, despite the court orders. He had not paid the arrears of the maintenance even before the impugned order was passed. Hence, the petitioner does not deserve any lenient view. Even if, the petitioner is to be given some consideration on this aspect; that has to be with an exemplary costs.

Having heard learned counsel for the parties, this Court does not find any legal error with the impugned order passed by the trial Court, as such. However, the procedure and process of the Court is meant to dispense justice to the parties coming to the Court. Therefore, in a situation where the substantial justice and the procedural aspect are the competing factors, the Court has to lean towards the substantial justice. Hence, it would not be unjustified to grant one opportunity to the petitioner to cross examine the witnesses of the respondent, however, by putting him to some financial burden.

Accordingly, the present revision petition is disposed of with a direction to the trial Court to grant one opportunity to the petitioner to cross examine the witnesses of the respondent. However, this opportunity is subject to payment of Rs.10,000/- as costs, to be deposited with the Institute for Blind, Sector-26, Chandigarh, within a period of two weeks from today.

The trial Court shall grant one opportunity to the petitioner to cross examine

the witness(es) of the respondent; on production of the receipt for having the deposited the costs, as ordered above.

20th SEPTEMBER, 2021
'sandeep'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No