

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

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CR No.1811 of 2021 (O&M)
DATE OF DECISION : 7th SEPTEMBER, 2021

Parkash Kaur

.... Petitioner

Versus

Jaswinder Kaur

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Munish Gulati, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed under Articles 227 of the Constitution of India for setting aside order dated 27.08.2021 passed by the Additional Civil Judge (Senior Division), Moga, vide which the oral evidence of DW 1-Jaswinder Kaur has been closed, by denying any further opportunity to cross-examine the said witness.

It is submitted by the counsel for the petitioner that the petitioner has been duly prosecuting her case before the trial court. However, on two occasions the counsel for the petitioner could not appear before the trial court because of unavoidable circumstances. On the last date the counsel for the petitioner could not appear because he was arguing the case before another court. Accordingly, on the last date the right of the plaintiff to cross-examine DW-1-Jaswinder Kaur, has been abrogated and the cross-examination has been treated as nil. The case has been further fixed for documentary evidence of the defendant. The counsel has submitted that the absence of the counsel before the court below was not intentional. The counsel had deputed his assisting counsel to apprise the court regarding the fact that the counsel was

arguing the case before another Court. However, even the assisting counsel also could not appear and therefore, the court could not be apprised of the fact that the counsel was, in fact, arguing his case before another Court. Further argument of the counsel for the petitioner is that the petitioner undertakes to ensure the presence of her counsel on any future date, without fail.

The object of the process of the court is to ensure that justice is done to the parties. In an endeavour to ensure that the justice prevails through the court proceedings, the technicalities of the procedure can be interpreted in an ameliorating manner. Although, this court does not find any fault with the order passed by the court below, however, interest of justice should not be permitted to be stifled by procedural aspect, particularly; when the other party can be compensated through cost. Hence, it would not be unjustified if the petitioner is granted one more opportunity to cross-examine the witness(es) of the defendant, however, by putting her to an appropriate cost.

Accordingly, the present petition is disposed of with a direction to the trial court to provide one opportunity to the petitioner to cross-examine the witness(es) of the defendant, subject to the payment of ₹2,000/- as cost. However, it is clarified that the petitioner would not be entitled to any further opportunity for the same purpose.

7TH SEPTEMBER, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>