

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

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**CR No. 2350 of 2021
Date of decision : 10.12.2021**

Chand Kaur

.....Petitioner

Vs.

Ramdei @ Om Pati and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 24.9.2021 (Annexure P-7), passed by the Civil Judge (Senior Division), Sonapat, vide which the application filed by the petitioner/defendant No.1 for allowing her to cross examine PW-2 and PW-4, was declined and also against the order dated 6.8.2019 (Annexure P-4), wherein the opportunity to cross examine PW-2 and PW-4 was recorded as 'Nil. opportunity given'.

It is submitted by counsel for the petitioner that the petitioner being a contesting defendant is very much interested in contesting the suit. Rather, the other side has already lost upto the High Court in another litigation. The petitioner never had any intention to delay the proceedings of the suit or to delay the cross examination of the witnesses. Although the case was adjourned several times for cross examination of PW-2 and PW-4, however, the petitioner had availed only two adjournments. On the third time, a request was made to the trial Court to adjourn the case only for the next day so as to cross examine the said witnesses. However, that prayer was declined and the Court offered

option to the proxy counsel to cross examine the said witnesses. However, since the proxy counsel was not aware about any aspects of the merits of the case, therefore, he could not cross examine anyone of these witnesses. Hence, the Court recorded in the order that the opportunity to cross examination was granted but the opportunity availed was nil. Thereafter, the petitioner even moved an application for granting permission to cross examine the PW-2 and PW-4, however, even the said application was declined by the Court below. The counsel has further submitted that the other defendants are colluding with the plaintiff. It is the petitioner only who is the contesting defendant. If the opportunity to cross examine PW-2 and PW-4 is not granted to the petitioner, then the petitioner would suffer a serious prejudice qua her case. The case is still at the stage of the plaintiffs' evidence. Hence, no prejudice would be caused to the plaintiff, if the petitioner is granted an opportunity to cross examine her two witnesses; mentioned above.

In view of the order intended to be passed in the case, the Court does not deem it appropriate to issue any notice to the other side, at this stage.

Having heard counsel for the petitioner and having perused the case file, this Court finds that the trial Court had adjourned the case for cross examination of these witnesses several times. Some time the other defendants prayed for adjournment and, at least, twice even the petitioner prayed for adjournments for cross examination of the said witnesses. The trial Court could not have adjourned the case just to facilitate the defendants to cross examine the witnesses at their convenience. Hence, the order passed by the Court does not suffer from any illegality or irregularity; as such. However, the suit is at the initial stage and if the petitioner, who is the contesting defendant

in the suit, is not granted opportunity to cross examine the said witnesses, then obviously, the petitioner would suffer a great prejudice qua her case. Moreover, this Court is of the opinion that the procedural law is only to facilitate the substantial justice. When the procedural technicalities are pitted against interest of substantial justice, the Court has to favour the later one. Therefore, the petitioner deserves to be granted one more opportunity to cross examine the witnesses mentioned above, however, by putting her under an appropriate financial burden.

In view of the above, the order passed by the trial Court is set aside. The present petition is disposed of with a direction to the Court below to grant one effective opportunity to the petitioner to cross examine PW-2 and PW-4, subject to payment of Rs.15,000/-as costs, to be deposited with the Institute of Blinds, Sector 26, Chandigarh, within a period of 15 days.

However, it is clarified that the petitioner shall be granted the said opportunity to cross examine the above mentioned witnesses only after production of the receipt before the trial Court; of having deposited the cost as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

10.12.2021
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No