

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

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CR No.557 of 2022 (O&M)
DATE OF DECISION : 21st FEBRUARY, 2022

Jatinder Kaur

.... Petitioner

Versus

Parvinder Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.12.2021 (Annexure P-4) passed by the Principal Judge, Family Court, Sangrur (for short, the trial Court), whereby the cross-examination of the witnesses (AW1 to AW3) has been treated as NIL, with a further prayer that the proceedings before the trial Court be stayed during the pendency of present petition.

It is submitted by the counsel for the petitioner that the issues in the case were framed on 04.08.2021. Thereafter, the case was adjourned for evidence of the respondent, who is the petitioner before the trial Court. The respondent examined his witnesses on 08.10.2021. However, said witnesses could not be cross-examined by the counsel for the present petitioner because the affidavits in examination-in-chief were submitted on that very day. Thereafter, the case was adjourned for 10.11.2021. On that

day also, the witnesses could not be cross-examined, rather, an application for interim maintenance was filed on behalf of the present petitioner. Again on 01.12.2021 the witnesses came present, however, the counsel for the present petitioner could not examine them because he was under the impression that first the Court would be taking up the application moved for interim maintenance; and also because he was not feeling well. The counsel has relied upon the medical certificate of the counsel to that effect, which has been attached with the present petition as Annexure P-7. Accordingly, it is submitted that the petitioner has not intentionally avoided cross-examining the witnesses. Therefore, the impugned order dated 01.12.2021 passed by the trial Court, whereby the opportunity to cross-examine the witnesses of the other side has been treated as Nil; deserves to be set aside.

In view of order which this Court intends to pass, this Court does not deem it necessary to issue notice to the other side.

Having heard the counsel for the petitioner and having perused the file, this Court finds that the trial Court had granted at least three dates to the petitioner to cross-examine the witnesses of the other side, which were coming to the Court repeatedly. Even if, there had been a difference of perception with the counsel for the present petitioner qua the date fixed, it cannot be said that the petitioner has been denied opportunity to cross-examine the witnesses of the other side without reason. Therefore, no impropriety with the impugned order, as such, can be found. However, the procedural law is handmade to advance the interest of the substantial justice. In case of conflict between the procedural law and the interest of substantial justice, the Court has to lean towards the interest of the substantial justice. Accordingly, it would not be unjustified to grant one more effective opportunity to the present petitioner to cross-examine the

witnesses of the other side, however, by putting her under an appropriate financial burden.

In view of the above, the impugned order dated 01.12.2021 is set aside to the extent of it treating the opportunity to cross-examine the witnesses as Nil. The present revision petition is disposed of with a direction to the trial Court to grant one more effective opportunity to the petitioner to cross-examine the witnesses of the other side, subject to payment of ₹10,000/- as costs, to be deposited with the Institute for Blind, Sector 26, Chandigarh, within a period of 15 days from today.

However, it is clarified that the trial Court shall grant the above said opportunity to the petitioner only on production of the receipt of the costs having been deposited, as ordered above.

21st FEBRUARY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

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