

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

123

CR-1552-2022

Date of decision: 28.04.2022

MAMTA KAPOOR

.....Petitioner

Versus

RAJ KUMAR AND OTHERS

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arpan Sabharwal, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is impugning order dated 05.10.2018 (Annexure P-3) passed by the learned Civil Judge (Jr. Divn.), Ludhiana whereby the opportunity to the petitioner to cross-examine PW-3 Ranbir Kumar was treated as nil in Civil Suit bearing No.CS/4500/15 titled as 'Raj Kumar Vs. Mamta Kapoor and others'.

Learned counsel for the petitioner submits that the petitioner/defendant No.1 along with respondent No.2/defendant No.2 had appeared before the Court concerned and filed their written statement on 09.12.2015 and thereafter issues were framed by the learned Civil Judge vide order dated 13.01.2016, however, due to unavoidable circumstances on 05.10.2018 PW-3 Ranbir Kumar's cross-examination could not be done and the Court treated the opportunity to cross-examine PW-3 Ranbir Kumar as nil. It was submitted that thereafter the remaining plaintiff's evidence was recorded and vide order dated 30.11.2019 the evidence of the plaintiff was closed by order. Learned counsel submits that the petitioner would be greatly prejudiced in case one last effective opportunity is not granted to him

because the cross-examination of PW-3 Ranbir Kumar could not be done on account of the petitioner's counsel being busy before another Court on the said date. He further submits that the Court below failed to take into account that the delay in the recording of the evidence had only been not due to the petitioner and other defendants but also on account of the plaintiff himself availing innumerable opportunities. In support, learned counsel has invited the attention of this Court to the order dated 29.05.2018 wherein it stands reflected that the plaintiff had availed 26 effective opportunities for getting the prosecution witnesses examined to conclude his evidence. A prayer has, therefore, been made to take compassionate and lenient view and grant one last effective opportunity to the petitioner to cross-examine PW-3 Ranbir Kumar.

I have heard learned counsel for the petitioner and perused the material placed on record.

A perusal of the zimni order reveals that on 05.10.2018 the prosecution witness Ranbir Kumar appeared for his evidence and cross-examination. However, the Court below waited the entire day for the defence to cross-examine him. Since the defendant counsel did not turn up, the Court treated his opportunity to cross-examine the witness as nil.

In the wake of the above, this Court is of the opinion that without issuing notice to the respondent No.1/plaintiff, to avoid any further delay as well as the expenses, which he shall have to incur to defend these proceedings, the impugned order dated 05.10.2018 be set aside.

The revision petition is allowed in the following terms:-

(1) The petitioner is granted one last effective opportunity to cross-examine PW-3 Ranbir Kumar on the next date of hearing before the trial Court.

(2) In the event of the petitioner failing to cross-examine PW-3 Ranbir Kumar, the matter shall not be adjourned any further and no further opportunity shall be given to the petitioner for cross-examining PW-3 Ranbir Kumar.

(3) This, however, shall be subject to payment of costs in the sum of Rs.10,000/- to be paid to respondent No.1/plaintiff, which shall be a condition precedent.

28.04.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No