

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2828-2022 (O&M)
Date of decision: 21.07.2022

Manjinder Kaur

... Petitioner

Vs.

Pawan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 26.05.2022 passed by the Principal Judge, Family Court, Hoshiarpur, vide which statement of respondent-husband/PW1 Pawan Kumar was ordered to be treated as Nil, as the petitioner-wife failed to cross-examine him.

Learned counsel for the petitioner submits that respondent-husband Pawan Kumar filed a petition under Section 13 of the Hindu Marriage Act, in which the trial Court initially passed an order on 26.05.2022 for clearing the arrears of maintenance and on the same day, when statement of PW1 Pawan Kumar was to be recorded, following order was passed: -

“Ld. Counsel for the petitioner states that his witnesses are present. Petitioner came forward for his cross-examination, but learned counsel for respondent refused to cross-examine him. He

was told that once his application has been dismissed, now he had no reason, not to cross-examine the witness, but he said that he will not cross-examine him and will file revision against today's order and thereafter, he will cross-examine him. He was told that mere intention to file revision was no ground, not to cross-examine the witness and that he should cross-examine the witness once his application has been dismissed. Even the witness was called in the witness box. Thrice counsel for the respondent was requested to cross-examine the witness, but he said he will not cross-examine the witness. Ultimately he was told that if he still does not cross-examine the witness, this Court will be left with no option, but to consider it as nil, but still learned counsel for the respondent was adamant and stated that it may be considered as nil, but he will not cross-examine the witness. As such PW1 Pawan Kumar, petitioner who took the witness box for cross-examination, his cross-examination was treated as nil. Now it is lunch time and learned counsel for the respondent has requested that he has appointment with some dentist and will not be able to appear in the after lunch session, therefore, witness PW2 Narinder Kumar and PW3 Gurvinder Singh who are present in the Court are bound down for 14.7.2022."

Learned counsel further submits that in fact, counsel for respondent therein was having some medical problem and on that account, he could not cross-examine the witness and there was no intention on the part of the

petitioner not to cross-examine PW1 Pawan Kumar, who is husband of the petitioner and in the absence of his cross-examination, entire defence of the petitioner will fall flat, therefore, one opportunity be granted to the petitioner to cross-examine PW1 Pawan Kumar.

After hearing learned counsel for the petitioner and considering the fact that the trial Court has adopted a little harsh view in not giving one opportunity to the petitioner to cross-examine PW1 Pawan Kumar, as petition under Section 13 of the Hindu Marriage Act is pending since 2018 and evidence of the respondent-husband started only on the date, when the impugned order was passed, therefore, in order to avoid any further delay, issuance of notice of motion is dispensed with

In view of the above, present petition is allowed and the impugned order dated 26.05.2022 is set aside. The petitioner is granted one opportunity to cross-examine PW1 Pawan Kumar.

Granting of one opportunity would mean an effective opportunity on the day, when PW1 Pawan Kumar is present in the Court and he will be cross-examined by the petitioner-wife.

[ARVIND SINGH SANGWAN]
JUDGE

21.07.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No