

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3114-22

Date of Decision: 05.08.2022

Gurnam Singh (Deceased) through his LR
Inderjit Kaur.....Petitioner

Versus

Surjit Kaur and others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Raj Kumar Gupta, Advocate
for the petitioner.

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MANJARI NEHRU KAUL, J. (Oral)

The petitioner is impugning the order dated 29.04.2022 (Annexure P1), passed by the learned Additional Civil Judge (Sr. Divn.), Nabha, vide which evidence of the petitioner was closed by Court order. In addition, the petitioner is also seeking the setting aside of the order dated 20.05.2022 (Annexure P-2) vide which an application moved by the petitioner for modification of order dated 29.04.2022 and granting opportunity to lead and conclude its evidence was also dismissed.

Learned counsel for the petitioner *inter alia* contends that the petitioner was unable to appear for her remaining cross-examination on 29.04.2022 as she had suffered a foot and ankle fracture due to which her movement was restricted. Learned counsel submits that an application for adjournment (Annexure P4) duly supported with the medical prescription was moved by the counsel for the petitioner, however, the learned court

below dismissed the said application and further closed the evidence of the petitioner vide impugned order dated 29.04.2022 (Annexure P1). He further submits that the learned court below failed to appreciate that the petitioner had tendered her affidavit in her examination-in-chief on 11.10.2021 and thereafter the case was adjourned on request of counsel for the defendants for her cross-examination. He submits that the petitioner was thereafter partially cross-examined and it was only on request of the counsel for the defendants that the case was adjourned for her remaining cross-examination. He further submits that the absence of petitioner on 29.04.2022 was neither intentional nor *mala fide*. He submits that one last effective opportunity be granted to the petitioner for adducing her evidence, failing which she would suffer irreparable loss.

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

A perusal of record reveal that the defendants had sought adjournment for petitioner's cross-examination except on a few occasions. No doubt the case pertains to the year 2006, however, the petitioner alone cannot be blamed for the delay.

Hence, in view of the submissions made by the learned counsel for the petitioner, this Court is of the opinion that the failure of the petitioner to lead her evidence was not intentional. If the petitioner is not granted one more opportunity to lead her evidence, she would suffer irreparable loss which in turn would result in miscarriage of justice. Therefore, for just and proper adjudication of the case, this Court deems it appropriate to grant one last effective opportunity to the petitioner to lead her evidence.

In the wake of the above, without issuing notice to the respondents, to avoid any further delay as well as expenses which respondent No.1 shall have to incur to defend these proceedings, the impugned orders dated 29.04.2022 (Annexure P1) and 20.05.2022 (Annexure P2), are set aside. The instant revision petition is allowed in the following terms:-

1. The petitioner is granted one last effective opportunity to lead her evidence.
2. In the event of default by the petitioner, the case shall not be adjourned any further for leading her evidence and consequently her evidence shall be deemed to be closed by Court order.
3. This, however, shall be subject to payment of costs in the sum of Rs.10,000/- to be paid to respondent No.1 which shall be a condition precedent.

05.08.2022
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No