

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

**131**

**FAO-5324-2022 (O&M)**

Date of decision:- 19.12.2022

Smt. Shilpi Agrawal

.... Appellant

Vs.

Padmesh Pankaj

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI  
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Vimal Kumar Gupta, Advocate for the appellant.

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**Manisha Batra, J.**

The present appeal has been filed by the appellant challenging the order dated 21.11.2022, passed by learned Principal Judge, Family Court, Gurugram, in Guardianship petition No. GW-86-2016 titled as ***Padmesh Pankaj Vs. Shilpi Agrawal*** whereby her evidence was ordered to be closed by order of the Court and order dated 08.12.2022 whereby application filed by her for setting aside order dated 21.11.2022 was dismissed.

The aforementioned petition has been filed by the respondent-husband seeking custody of the minor children of the parties. The respondent-husband has already concluded his evidence before the learned trial Court. Appellant-wife had stepped into witness box as RW-1 and produced her brother, namely, Manoj Aggarwal, as RW-2 on 19.05.2022 and were examined-in-chief. On 21.11.2022, her brother could not appear for his cross-examination and the learned Family Court had closed her evidence by order of the Court. Subsequently, application

filed by her for setting aside the order dated 21.11.2022 was also dismissed.

The appellant has prayed for granting her only one opportunity to produce her brother so that his cross-examination can be concluded. It is urged that she would otherwise suffer irreparable loss and injury. Hence the present appeal.

We have heard learned counsel for the appellant and have perused the material placed on record with his assistance.

The photocopies of the orders passed by learned trial Court have been placed on record, which reveal that on 19.05.2022, the present appellant as well as her brother had appeared as witnesses before learned Family Court. They were examined-in-chief and their cross-examination was deferred as Court time was over. Subsequently, they appeared on 01.08.2022, but their cross-examination could not be conducted as counsel for the respondent was not present. The matter was then posted to 21.11.2022, on which date the cross-examination of the appellant was conducted. Since on that day RW-2, Manoj Aggarwal was not present for his cross-examination, learned trial Court while observing that several opportunities had already been availed by the appellant to conclude her evidence, closed the same by order of the Court.

Vide order dated 08.12.2022, learned trial Court dismissed the application filed by the appellant for granting her one effective opportunity to produce RW-2. It is apparent from the record that the appellant and RW-2 had put in appearance on two consecutive dates for their cross-examination which could not be conducted due to one or the other reason. The appellant was cross-examined on 21.11.2022.

However, her brother was not present and the trial Court had closed the evidence of the appellant, though no last opportunity was granted for that purpose. It cannot be inferred from the circumstances that there was any *mala fide* on the part of the appellant to not to produce her witness on 21.11.2022 as her witness had appeared on two previous occasions and had tried to tender himself for cross-examination. Though, learned trial Court has posted the matter for rebuttal evidence and otherwise for final arguments, however, interest of justice would be met, if, at least one opportunity of cross-examination of witness of the appellant is granted to the appellant. The respondent-husband can be compensated by way of costs.

With these observations, the present appeal is allowed, impugned orders dated 21.11.2022 and 08.12.2022 are set-aside and learned trial Court is directed to give one effective opportunity to the appellant to produce her brother i.e. RW-2, Manoj Aggarwal, before the learned Family Court for his cross-examination by the respondent subject to payment of Rs.5,000/- as costs by the appellant to respondent before learned trial Court.

Certified copy of this order be given to learned counsel for the appellant under the signatures of the Bench Secretary of this Court.

**(RITU BAHRI) (MANISHA BATRA )**  
**JUDGE JUDGE**

**19.12.2022**

pooja saini

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