

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

CR-546-2020

Date of Decision: 06.09.2023.

203

KASTURI DEVI (SINCE DECEASED) THROUGH HER LRS.

.....Petitioners

Versus

SMT. RESHMA DEVI AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Akshay Kumar Jindal, Advocate for the petitioners.
None for the respondents.

GURBIR SINGH, J (ORAL)

1. Challenge in this petition is for setting aside the order dated 03.12.2019 (Annexure P-6) passed by the learned Civil Judge (Junior Division) Naraingarh whereby the application filed by the petitioner for recalling of DW-Surinder Pal has been dismissed and order dated 02.08.2018 (Annexure P-3) passed by learned Civil Judge (Junior Division) Naraingarh whereby opportunity to cross examine the said witness has been treated as Nil.

2. Facts as culled out from the paper book are that the petitioner has filed a suit for declaration and permanent injunction. Defendants/respondents contested a suit and filed a written statement. The petitioner has already led the evidence.

3. On 02.08.2018, defendant/respondent-Surinderpal was present for the purpose of cross examination but the petitioner failed to conduct the cross examination and it was treated as 'Nil'.

4. Learned counsel for the petitioner has submitted that only on 26.07.2018, defendant No.3-Surinder Pal tendered his affidavit by way of

examination in chief. The counsel for the petitioner could not appear in the Court as he was busy in the District Court, Ambala, and the case was adjourned to 02.08.2018. On the said date, counsel for the petitioner did not appear and DW-Surinder Pal requested that he was in Merchant Navy and being moved by the request of the said DW, the learned Court treated cross examination of said witness as 'Nil'. The counsel for the petitioner was not present on the said date. The petitioner should not suffer on the fault of his counsel. As per the impugned order, none was present on behalf of the plaintiff-petitioner on that day. Counsel for the petitioner has further submitted that only one opportunity be granted to the petitioner and he will cross examine the DW-Surinder Pal, otherwise the petitioner would suffer.

5. None appeared on behalf of respondents despite notice.

6. I have heard the submissions of the learned counsel for the petitioner. Keeping in view, that the procedure is handmaid to the administrative of justice. It is meant for advancement of justice and a person should not be non suited only on ground of technicalities or fault of his counsel, this petition deserves to be allowed.

7. As per the impugned order, affidavit of the DW was tendered only on 26.07.2018 and on the next date of hearing i.e. 02.08.2018 cross examination of the witness was treated as 'Nil'. On that day neither plaintiff nor her Counsel was present. It was the duty of the counsel to appear and cross examine the witness. However, he did not appear and plaintiff was not aware that her counsel would not appear. In the interest of justice, order dated 02.08.2018 is set aside subject to payment of Rs.5000/- as costs to be paid to witness and one opportunity is granted to the petitioner to cross examine the

said witness.

8. The learned trial Court is directed to fix the date for cross examination of the said witness after knowing the presence of witness in India through his counsel. Witness shall appear in the Court at his own responsibility.

9. Petition stands disposed of.

(GURBIR SINGH)
JUDGE

06.09.2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No