

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1621-2023
Date of Decision: 15.03.2023

Dr. Sinny Goyal Petitioner

Versus

Dr. Kamal Kumar Goyal Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Deepkaran Dalal, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India for setting aside the order dated 06.03.2023 (Annexure P-1) passed by the Principal Judge, Family Court, Palwal, whereby the evidence of the petitioner has been closed by order of the Court.

It is submitted by the learned counsel for the petitioner that the Trial Court has wrongly closed the evidence of the petitioner by order on account of non-examination of the defence witnesses. It is further submitted that the default in leading the evidence on the part of the petitioner was not deliberate and the said default happened due to mitigating circumstances on account of petitioner having met with an accident and suffered ankle fracture, for which she was advised bed rest, and thereafter had undergone surgery. The said fact is duly corroborated with the documents placed on record. Moreover on 19.01.2023, when the petitioner was unable to walk; and remained in pain, still she had reached the Court to lead evidence and

tendered her affidavit which was taken on record as Ex.RW1/A, but the matter was adjourned to 09.02.2023 on account of non-appearance of the respondent. He has further submitted that the since the petitioner is the contesting defendant, therefore, case of the petitioner would be seriously prejudiced, if she is not granted opportunity to lead the evidence. Hence, the petitioner deserves to be granted opportunity to lead the evidence.

In view of the nature of the order being passed in this case, there is no requirement of notice to the respondents at this stage.

Having heard learned counsel for the petitioner and having perused the case file, this Court finds that the Trial Court has granted five effective opportunities before passing of the order of closure of evidence of the petitioner. Therefore, there does not appear to be any *ex facie* illegality or impropriety in the order passed by the Trial Court, as such.

However, the law of procedure is handmade to advance the interest of the substantial justice. Therefore, the emphasis of the law has to be to hear-out the parties instead of excluding them from hearing. Moreover, the petitioner is a respondent in the divorce petition and her case would be adversely effected beyond redemption, if she is not granted an opportunity to lead the evidence. Therefore, it would not be inappropriate, if the petitioner is granted opportunity to lead the evidence, however, by putting her under an appropriate financial burden; so as to make her realize her mistake of wasting time of the Court.

In view of the above, the present petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court is

directed to grant two effective opportunities to the petitioner to lead evidence in support of her defence and to contest the petition accordingly, however, subject to payment of Rs.5,000/- as costs by the petitioner, to be deposited with the Institute for the Blinds, Sector 26, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid opportunities to the petitioner only on her producing the receipt of having deposited the costs, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

15.03.2023
adhikari

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