

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

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**CRM-M No. 20329 of 2023
Date of Decision : 25.4.2023**

*Gian Chand**..... Petitioner**versus**Praksha alias Priya and others**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vijay Rana, Advocate with
Ms. Shreya Rani, Advocate, for the petitioner

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed for setting aside the order dated 26.10.2022 (Annexure P-6) which was passed on the petitioner's failure to cross-examine respondent no.1/applicant-wife. Her cross-examination was treated as NIL and the case was adjourned for recording of the applicant's remaining evidence.

2. Learned counsel for the petitioner contends that respondent no.1 filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. During pendency of trial, since no AW (Applicant's witness) was present, costs of Rs.100/- were imposed upon the applicant/respondent no.1 vide order dated 2.6.2022 (Annexure P-2). The case was adjourned to 2.8.2022 for recording of applicant's evidence subject to last opportunity. On that date also, the costs were not paid, but evidence of AW-1 and AW-2 was tendered by way of duly sworn affidavits. Both the witnesses were bound down for cross-examination on request of learned opposite counsel for 8.9.2022. On the said date also, costs were not paid, nor was any AW

present. The case was adjourned to 26.10.2022, when the impugned order was passed by recording that costs in terms of the order dated 2.6.2022 have not been paid. Despite the applicant-AW-1 being present, she has not been cross-examined by learned counsel representing the petitioner (respondent no.2 in the complaint) and other respondents no.3 to 8. On that account, cross-examination of AW-1 was treated as NIL and the case was adjourned to 6.12.2022 for remaining evidence.

3. Learned counsel for the petitioner contends that the impugned order has been passed on wrong premise. Costs were not imposed upon the petitioner. As per order dated 2.6.2022, the costs of Rs.100/- were imposed upon the applicant/respondent no.1 since none of her witnesses was present on that date. It is further contended that the counsel representing the petitioner and other respondents before the trial Court was busy in another case and request for adjournment was made on his behalf. Without granting the request, the cross-examination of AW-1 was treated as NIL and the case was adjourned. The petitioner has no fault in the matter.

4. The arguments advanced by learned counsel for the petitioner have been considered. It is apparent from the order dated 2.6.2022 that costs were not imposed upon the petitioner; nor was he required to pay the same. The order also records that due to failure of learned counsel for respondents no.2 to 8 to conduct cross-examination of AW-1, the cross-examination is treated as NIL. Therefore, assertions by learned counsel for the petitioner, without any substantiation, cannot be believed. Still, this Court is of the view that due to failure of learned counsel representing the petitioner (respondents before the trial Court) to cross-examine the witness AW-1 on one date, the petitioner should not be put to a disadvantage. The impugned order will seriously

prejudice his interests, as AW-1/applicant is a material witness. As per settled law, any lapse on the part of a counsel should not harm the clients’ interests.

5. Therefore, the impugned order dated 26.10.2022 is set aside, affording one more opportunity to the petitioner to cross-examine the said witness AW-1 before the trial Court, subject to payment of Rs.10,000/- as costs to the applicant.

6. Disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

25.4.2023
Ashwani

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