

CR-3817-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-3817-2023 (O&M)
Decided on : 15.09.2023

Abhinav Bhatnagar

. . . Petitioner(s)

Versus

Shailly Bhatnagar

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Raj Kaushik, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

CM-11738-CII-2023

Allowed as prayed for.

CR-3817-2023 (O&M)

1. Present revision petition has been preferred by the petitioner – Abhinav Bhatnagar, challenging the order dated 05.04.2023 (P-1), whereby, the Court of learned Principal Judge, Family Court, Gurugram, closed the evidence of the petitioner, by order.

2. Learned counsel for the petitioner submits that a petition under Sections 7, 9 & 25 of the Guardians and Wards Act, 1890, read with Section 7(G) of the Family Courts Act, 1984, had been instituted by the petitioner – Abhinav Bhatnagar against his wife – Shailly Bhatnagar (respondent herein), for seeking custody of the minor child namely; 'Paakhi Bhatnagar'.

3. Learned counsel further submits that after filing of the said petition, first opportunity for leading of the evidence by the petitioner was fixed for 14.09.2022. On that date, examination-in-chief of the petitioner was recorded as PW-1, but cross-examination was not conducted by the respondent. Thereafter, it was adjourned to 16.11.2022.

On 16.11.2022, again respondent did not cross-examine the petitioner and on request of counsel for the respondent, it was adjourned to 06.02.2023.

On 06.02.2023, petitioner could not come present to the Court, as he was not well and in support of the factum of his illness, medical certificate along with prescription slip was also placed on record. Again, proceedings were adjourned for 05.04.2023, for the purpose of conducting of cross-examination of the petitioner, and leading of the remaining evidences on his behalf.

On 05.04.2023, again petitioner could not appear before the learned Trial Court and a request was made by counsel for the petitioner by stating that petitioner is out of station. However, by recording the factum of absence of the petitioner on 16.11.2022 and 06.02.2023, learned Trial Court vide impugned order dated 05.04.2023 (P-1), closed his evidence, by observing that petitioner was not present for cross-examination, as petitioner does not seem to be interested in facing the cross-examination.

4. Learned counsel further submits that the observation made by learned Trial Court is partly incorrect, because on 06.11.2022, petitioner was very much present before the Court to face cross-examination, but it was the respondent only, who sought adjournment, because the counsel was not available. However, he does not dispute his absence on 06.02.2023, and 05.04.2023. Further submits that as far as the absence on 06.02.2023 is concerned, on the basis of documentary evidence available before the Court in the form of medical certificate & prescription slip, the exemption was granted and it was adjourned for 05.04.2023.

Thus, practically speaking, on account of being out of station, absence of the petitioner can be considered for only one date i.e. on

05.04.2023.

5. Heard.

6. Be that as it may, I have taken note of all the circumstances, and gone through the impugned order dated 05.04.2023 (P-1), and I am convinced that at least on two occasions when petitioner was present, it was the request on behalf of the respondent for deferring the cross-examination of petitioner (PW1), and said adjournment cannot be attributed to the witness i.e. petitioner.

7. For the purpose of deciding the short issue involved in the present revision petition, I do not deem it appropriate to prolong the proceedings before this Court by calling the other side before this Court. Therefore, present revision petition is **allowed** partly, by setting aside the impugned order dated 05.04.2023 (P-1), whereby, opportunity of leading of evidence & cross-examination of the petitioner (PW1), was closed by the Trial Court order.

8. Accordingly, present revision petition stands **disposed of** with a direction to the Trial Court to give two effective opportunities to the petitioner within a period of one month, to lead evidence by him including cross-examination of the petitioner (PW1), if so asked by the respondent.

Pending misc. applications, if any also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 15, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No