

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4160-2022 (O&M)

Date of Decision: April 20, 2023

Shubham Agarwal

...Petitioner

Versus

Kanika Gupta

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Petitioner-in-person along with
Mr.Paramjeet Phor, Advocate

Respondent-in-person along with
Mr.Aman Arora, Advocate

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated
26.05.2022 (Annexure P-9).

During the pendency of the divorce petition filed at the instance
of the respondent-wife, the petitioner-husband (respondent therein) had
filed an application under Order 18 Rule 17 CPC and the same was disposed
of, vide impugned order dated 26.05.2022 by learned Addl. Principal Judge,
Family Court.

The material facts, as culled out from the paperbook are that the
marriage between the parties to the lis had taken place on 29.04.2017.
However, there was matrimonial dispute, as a result whereof, a petition for

seeking divorce was filed, at the instance of respondent-wife. During the pendency of the said petition, respondent-wife and her mother had appeared as PW-1 and PW-2 and had tendered into evidence, their affidavits. However, for their cross-examination, adjournment was sought, time and again, as a result whereof, the Court had considered the cross-examination as 'nil' and further evidence was closed by the respondent-wife.

Faced with this situation, an application under Order 18 Rule 17 CPC, seeking permission to recall PW-1 and PW-2, for their cross-examination was filed by the petitioner-husband and the same was disposed of, vide impugned order.

Now, it is submitted by learned counsel for the petitioner that only one opportunity be granted to conduct the cross-examination of PW-1 and PW-2. It was due to the constrained circumstances that cross-examination of the aforesaid witnesses, was not got conducted, whereas, learned Family Court had erroneously imputed upon the conduct of the petitioner-husband.

On the other hand, learned counsel for the respondent-wife has submitted that the cross-examination of the aforesaid witnesses was deliberately not conducted and this fact had also been taken note of by the Family Court, in the impugned order. It is pointed out that after giving the detail of the manner, in which, the case was dragged by the petitioner, learned Family Court, had passed the aforesaid order. Even, despite imposition of costs, the cross-examination was not conducted and therefore, learned Family Court, had no option but to treat the cross-

examination as 'nil'.

In view of the submissions, so made, this Court has gone through the various zimini orders, which have been placed on record, prior to passing of the impugned order. Perusal of the same reveals that respondent-wife and her mother had made appearance in the Court as PW-1 and PW-2 and tendered into evidence their affidavits on 15.07.2021. However, their cross-examination was deferred, on the request of proxy counsel for the petitioner-husband and the case was adjourned to 16.07.2021.

On 16.07.2021, both the parties had made statement before the Court and got recorded that they want divorce and thereupon, the matter was adjourned for 23.08.2021, for consideration and finally, an order was passed on 21.09.2021, whereby, the parties were suggested to file separate petition under Section 13-B of the Hindu Marriage Act, for seeking divorce. Thereupon, the case was fixed for 25.10.2021, for conducting cross-examination of PW-1 Kanika, PW-2 Suman and remaining evidence of the petitioner. On the next date i.e. 25.10.2021, both, the wife as well as her mother were present for their cross-examination, but the same was not got conducted, as counsel for the present petitioner(who is respondent before Family Court), had sought some time. On request, the case was adjourned for 29.10.2021 for conducting of the cross-examination and it was stated to be last opportunity. Furthermore, in the order, specific timing was also given, thereby, directing the present petitioner, to conclude the cross-examination of respondent-wife (petitioner in the petition before Family Court) and her mother between 11.00 a.m. to 4.00 p.m.

However, on 29.10.2021, again, both respondent-wife and her mother, whose cross-examination was to be conducted, were present but the same was not got conducted and it has been observed in the zimini order that learned counsel who had to conduct the cross-examination did not make appearance. Only thereupon, an observation was made by the Family Court that seemingly, learned counsel for the petitioner (respondent therein) is not interested in conducting the cross-examination and therefore, cross-examination was treated as 'nil'. Time was specifically mentioned that it is already 4.00 p.m. Thereupon, the respondent-wife had closed her evidence by making statement and case was adjourned further for 06.12.2021 for recording of the evidence of the respondent (present petitioner) and thereafter, the case was adjourned for 03.01.2022 for the same purpose.

However, an application under Order 18 Rule 17 CPC for seeking permission to recall the said witnesses for cross-examination was filed, copy whereof Ex.P7. Therein, it is stated that respondent-wife had filed affidavits of PW-1 and PW-2 on 16.07.2021, which is factually wrong, as per the zimini orders, so observed as aforesaid. In the said application, it was submitted that inadvertently, the cross-examination of the witnesses, could not be done as the main counsel was not available. Even reply to the said application was filed and thereupon, vide impugned order, the aforesaid application was disposed of.

At this juncture, it is pertinent to mention that in the impugned order, the Court concerned had specifically given the manner of adjournment of the case, at the behest of the present petitioner. Specific

mention of the orders passed on each and every date, as observed by this Court aforesaid, as evident from the zimini orders, has been reproduced in the impugned order. Considering the constrained circumstances, under which the cross-examination was not being conducted, it is evident that on 25.10.2021, the Court concerned had discharged the witnesses at 4.00 p.m., after waiting in the Court from 11.00 a.m. To 4.00 p.m. Yet again, the case was adjourned further and on 29.10.2021 also, adjournment was sought due to the absence of the counsel and the witnesses were discharged at 4.00 p.m. Considering the same, the opportunity was stated to be 'nil' for conducting of cross-examination and the case was fixed for RWs for 06.12.2021 and then for 03.01.2022.

Keeping in view the aforesaid dates, it is also essential to note that an opportunity for conducting cross-examination was treated as 'nil' vide order dated 29.10.2021. However, the application under Order 18 Rule 17 CPC (Annexure P-7) was filed on 03.01.2022 , to recall and re-examine the aforesaid two witnesses PW-1 and PW-2. Considering the same, an observation has been made by the Court concerned to the effect that *'The conduct of the respondent is writ large on the face of it that he has no intention to cross-examine the witnesses when umpteen opportunities were granted to him to cross-examine but he deliberately did not do so and caused mental agony and monetary loss to the petitioner as she and her witness had to come present before the court every time and would be made to sit in the court entire day'*.

Despite expressing the constrained circumstances, so created by the petitioner, yet in the interest of justice, the application was allowed,

subject to payment of Rs.5000/- each to be paid to respondent-wife as well as her mother, to compensate the delay. Again, despite opportunity being provided, the proxy counsel namely Sh.Pravesh Yadav, making appearance on behalf of main counsel Sh.Prashant Yadav, had sought adjournment to cross-examine the witnesses.

In view of the same, it was observed that neither costs was paid nor cross-examination is conducted and precisely, on this account, it was further held that conduct of the present petitioner does not entitle him for any opportunity and the case was fixed for 05.08.2022, for evidence of the present petitioner. Not only this, furthermore, on 05.08.2022, when the case was taken up, one RW namely Umesh Chandra, who was present, was examined as RW-1 through Local Commissioner and no other RW was present and counsel for the respondent (present petitioner) closed evidence and the case was fixed for 20.09.2022, for rebuttal evidence, if any and for arguments. Copy of this order has been placed on record by learned counsel for the respondent.

In the given circumstances, it is pertinent to mention that till the recording of the statement of one of the witnesses of the present petitioner also and closing of the evidence, the impugned order dated 26.05.2022 had not been challenged. It was only, when the case was fixed for recording of the rebuttal evidence and arguments on 05.08.2022, the present revision petition was filed on 20.09.2022. Thus, from the aforesaid, it is not evident that actually the petitioner intends to cross-examine of the aforesaid witnesses and it was only under constrained circumstances, while observing the conduct of the present petitioner, in seeking adjournments,

one after the another and also not making the payment of costs, which was so imposed, the Court had observed that he is not entitled for any further opportunity and had fixed the case for his evidence.

After passing of this order on 26.05.2022, till 20.09.2022, the petitioner had remained silent. He had not challenged the aforesaid order, if he was aggrieved and furthermore, he had also examined his one witness and closed the evidence, as evident from the order dated 05.08.2022.

In the given circumstances, when the case had made much progress and there was intentional sleep-over, at the instance of the petitioner, for such a long time, no case is made out for setting aside the impugned order dated 26.05.2022.

Hence, the revision petition sans merit and is hereby dismissed.

April 20, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No