

2023:PHHC:142990
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-50083-2023(O&M)
Date of Decision: 08.11.2023

ARJUN GUPTA

...Petitioner

Versus

SHILPA GUPTA AND OTHERS

...Respondents

CORAM:- HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present:- Mr. Manish Soni, Advocate
for the petitioner.

HARPREET KAUR JEEWAN, J. (ORAL)

This petition under Section 482 Cr.P.C. for setting aside the order dated 23.08.2023 (Annexure P-5) has been filed whereby the Principal Judge, Family Court, Gurugram has closed the evidence of the petitioner and passed the following order:--

File again taken up at 3.30 PM as counsel for the respondent has appeared for cross-examination of petitioner PW4. The witness is present since morning for cross-examination. She is allowed to be cross- examined till 4.30 PM only. The witness has been cross-examined by learned counsel for the respondent. It is 4.30 PM.

An application to defer the cross-examination of PW4 Shilpa for tomorrow has been moved by the counsel for the respondent on the ground that witness Shilpa has purposely consumed court time with evasive answers and repeated explanations. The request of counsel for the respondent can not be accepted as counsel for the respondent had himself appeared at 3.30 PM for the cross-examination. Earlier in the morning the case was adjourned for 12.00 noon for cross-examination of the witness but counsel for the respondent had not appeared in the court. He has appeared in the court at 3.30 PM. Even on 25.7.2023 and on 5.8.2023 the witness was not cross-examined by the counsel for the respondent and the cross-examination was deferred on the request of counsel for the respondent. The present case pertains to the list of Action Plan cases. The present case

was filed by the petitioner in the year 2018. As per directions of the Hon'ble High Court the action place cases has to be decided expeditiously.

In these circumstances, the cross-examination can not be deferred as counsel for the respondent was specifically told that he can cross-examine the witness till 4.30 PM. Hence cross-examination of the petitioner PW4 stands deemed to be completed. Petitioner has closed her evidence inaffirmative vide her statement recorded separately.

Learned counsel for the petitioner contends that on 25.07.2023, the examination-in-chief of respondent No.1 was recorded as PW-4, whereby she has tendered into evidence her affidavit as well as documents, which were Exhibit P-1 to P-100. For conducting the cross-examination on such a voluminous documentary evidence, the petitioner was only granted one hour time, which is reflected in the impugned order that he was only permitted to cross-examine from 3.30 p.m. to 4.30 p.m.

Learned counsel for the petitioner further contends that as per the other two orders, which were recorded on the same day i.e. 23.08.2023 at page 88 of the paper book, counsel for the petitioner was busy at Palwal Court and could only reach Gurugram after lunch and there was no fault on the part of the petitioner.

Learned counsel for the petitioner submits that after the impugned order was passed, the respondent has cross-examined the petitioner-Arjun Gupta at length on 19.10.2023 and 20.10.2023. The petitioner could not cross-examine the respondent No.1 effectively as such the order would cause prejudice to his rights.

Upon advance notice, Mr. P.S. Ahluwalia, Advocate has put in appearance on behalf of the respondents and submits that after the examination-in-chief of the respondent No.1 was recorded, the case was adjourned on 3

different dates i.e. 05.08.2023, 16.08.2023 and 23.08.2023; and even on 23.08.2023, the case was taken thrice by the Court. However, the learned counsel for the respondents has also submitted that he has no objection if one opportunity is granted to the petitioner, subject to heavy costs, since the case is at final stage which is fixed for arguments on 16.11.2023.

Keeping in view the fact that 3 effective opportunities were granted to the petitioner for conducting cross-examination of respondent No.1, there is no reason to grant further opportunity as such. The impugned order does not suffer from any illegality, however, since on 23.08.2023 the learned counsel for the petitioner was not present before lunch and there was no fault on the part of the litigant as such, I am of the considered opinion that the litigant should not suffer on any fault on the part of the counsel. At the same time, the time consumed and inconvenience caused to the other party can be compensated with costs.

In such circumstances, the present petition is allowed.

The petitioner is granted one opportunity to cross-examine the respondent No.1 on 16.11.2023, subject to payment of Rs.50,000/- as costs to respondent No.1 and thereafter no further opportunity shall be granted for cross-examination.

The Family Court may grant an opportunity to the respondent to rebut the said evidence, if so, required by the respondent.

(HARPREET KAUR JEEWAN)
JUDGE

08.11.2023

P.Bhatt

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No