

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-6438-2023

Date of decision: 16.11.2023

Sunil

....Petitioner

Versus

Monika

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

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

AMARJOT BHATTI, J.

1. The petitioner-Sunil has filed the present civil revision under Article 227 of the Constitution of India for setting aside order dated 24.07.2023 (Annexure P-4) passed by learned Additional Principal Judge, Family Court, Gurugram in petition No.HMA/1173/2021 dated 20.09.2021 titled as “Monika Vs. Sunil” vide which the cross examination of respondent/wife who appeared as PW has been wrongly and illegally considered as NIL and further for granting opportunity to the present petitioner/husband to cross-examine the said witness as well as for setting aside order dated 25.09.2023 (Annexure P-5) vide which the evidence of the respondent has been closed.

2. Learned counsel for the petitioner argued that Monika as wife filed petition under Section 12(1)(c) of Hindu Marriage Act, 1955 for annulment of marriage by decree of nullity. Copy of petition is Annexure P1. The said petition is contested by the present petitioner/husband by

filing written statement which is Annexure P-2. In the case in hand issues were framed and the case was fixed for evidence of the petitioner i.e. Monika the wife. Her statement was recorded by way of affidavit on 21.07.2023 and it was adjourned for 24.07.2023. The copy of zimni order dated 21.07.2023 is Annexure P-3 and on the very next date when the petitioner was present for cross-examination his counsel requested for adjournment as he was not prepared for cross-examination. The cross-examination by the present petitioner/husband was treated as NIL and two dates were fixed for his evidence. The copy of impugned order dated 24.07.2023 is Annexure P-4. Thereafter, on 25.09.2023, the evidence of the present petitioner/husband Sunil was closed by order. It is pointed out that he was not given reasonable opportunity to cross-examine the witness nor he was provided reasonable opportunity to lead his evidence as a result his case has been adversely affected. It is prayed that he may be given one opportunity to cross-examine his wife/respondent-Monika and he may be given reasonable opportunity to conclude his evidence.

3. I have considered the arguments and have gone through the record. From the documents on record, it is clear that on one date the statement of Monika was recorded as PW-1 and on the next date when the counsel for the respondent could not cross-examine the witness, the cross-examination of Monika PW1 was treated as NIL. The impugned order is Annexure P-4 which shows that on that date the adjournment was being sought by a proxy counsel. The perusal of order dated 24.07.2023 shows that the adjournment was requested as the counsel was not prepared for cross-examination of the witness. The cross-examination of witness Monika was treated as NIL on the very next date. In my opinion, the

learned Additional Principal Judge, Family Court, Gurugram should have given another opportunity to cross-examine the witness considering the inability of counsel for the respondent and the cross-examination of Monika PW was treated as NIL in a hasty manner.

Apart from this, two dates were fixed for respondent evidence i.e. 21.08.2023 and 28.08.2023. When no witness was examined, the evidence of the respondent was also closed on 25.09.2023.

Considering the aforesaid facts, the learned trial Court has acted in a hasty manner which has resulted into great prejudice to the respondent (herein petitioner). Firstly, no reasonable opportunity was given to cross-examine Monika - petitioner who is the main witness and thereafter, the evidence of the respondent is also closed by order. It is always in the interest of justice that case is decided on merits after giving reasonable opportunities to both the parties to lead their evidence. Therefore, the civil revision filed by the present petitioner is accepted and the impugned orders dated 24.07.2023 (Annexure P-4) and 25.09.2023 (Annexure P-5) are accordingly set aside. The learned Principal Judge, Family Court, Gurugram is directed to give one effective opportunity to the present petitioner-Sunil to cross-examine Monika subject to payment of cost of Rs.10,000/- and thereafter, to grant two reasonable opportunities to the present petitioner-Sunil to conclude his evidence at his own responsibility.

Accordingly, the present civil revision stands declined.

16.11.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No