

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

CR-182-2024
Decided on 12.01.2024

Kanwarpreet Singh

...Petitioner

Versus

Harleen Kaur and others

...Respondents

CORAM: HON’BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Ravi Chadda, Advocate
for the petitioners.

RITU TAGORE, J. (Oral)

1. This revision-petition is filed by the petitioner, seeking to set aside the order dated 18.10.2023 (Annexure P-3) passed by Court of learned Additional Principal Judge (Family Court), Ludhiana (Punjab) in a case No. CIS Hindu ADP/13/2021, titled “Harleen Kaur and others Vs. Kanwarpreet Singh and others” whereby learned Family Court Judge, forfeited the right of the petitioner (defendant No.1 in the aforesaid case) by declaring the cross-examination of Harleen Kaur PW-1, (one of the plaintiffs in aforesaid case) on his behalf as Nil..
2. For the sake of clarity, parties will be referred to by their original status in the suit before the learned trial Court.
3. Notice to respondents (plaintiffs) is not issued, considering the limited prayer made by the petitioner.
4. Annexure P-1, copy of plaint, reveals that Harleen Kaur (plaintiff No.1), on behalf of herself and the minor children (Plaintiffs No.2 and 3) filed a suit under Sections 18 & 20 of Hindu Adoption and Maintenance Act 1956, for maintenance and permanent injunction against

the petitioners and others (defendants before the trial Court). The plaintiff No.1-Harleen Kaur seeks a sum of Rs.1 lakh for herself and Rs.50,000 each for both minor children (plaintiffs No.2 and 3) and additionally prayed for creating a charge on the House No.132-C Shastri Nagar, Race Course Road, Amritsar to secure maintenance and a further prayer to permanently restrain the defendants from alienating, transferring or mortgaging the property in question. The plaintiffs *inter alia* pleaded that plaintiff No.1 is a legally wedded wife of the defendant No.1 and plaintiffs No. 2 and 3 are the children born from the wed lock. The defendant No.1, along with other family members of in-laws subjected the plaintiff No.1 to cruelty, who was rescued by her brother and has been residing at her parental home since then. It is alleged that defendant No.1, is a business man with other properties in his name, having good and significant source of income but has refused to maintain and keep the plaintiffs, who lack independent source of income to maintain themselves. Based on these material allegations, the plaintiffs have filed a maintenance claim against the defendants.

5. Learned counsel for the petitioner-revisionist, referring to daily orders (as detailed in Annexure P-2), submits that on 23.01.2023 and on 15.02.2023 no witness on behalf of the plaintiffs was present. On 30.05.2023 and 13.07.2023 cross-examination of plaintiff Harleen Kaur (PW-1) was deferred. On 17.08.2023, work was suspended by the Bar, and on 05.10.2023, the next date given by the Court, the learned Presiding Officer was on leave. The case, scheduled for the cross-examination of the witness, was adjourned to 18.10.2023. It is urged that on due date the cross-examination of Harleen Kaur (PW-1) the plaintiff, on behalf of the defendants was treated as Nil in an arbitrary manner. The learned counsel contends that on 18.10.2023, no other witness was present on behalf of the

plaintiffs, and case was posted for their evidence. It is submitted that, given the circumstances, the Court should not have forfeited the defendant's right to the cross-examine the plaintiff Harleen Kaur (PW-1) by treating it as Nil. The learned trial Court should have given one more opportunity.

6. The learned counsel urges that witness PW-1 (Harleen Kaur) is one of the plaintiffs. She is a material witness and her cross-examination is very crucial for proper adjudication of the case. Submitting further, the established principles of law states that an opportunity of cross-examination in fair manner should be given to the parties to the *lis*. Learned counsel states that by closing the opportunity of cross-examination to the opposing party, here in the petitioner-revisionist, a serious prejudice has been caused to him. The learned counsel, thus submits that the impugned order is legally flawed and should be set aside.

7. I have considered the submission of the learned counsel for the petitioner-revisionist and have gone through the zimini orders (Annexure P-2) placed on record.

8. The above facts reveal that evidence of the plaintiffs was not concluded on the due date of hearing and the suit was posted for remaining evidence of the plaintiffs. In these circumstances, the Court should not have denied the defendants their right to cross-examine the plaintiff (Harleen Kaur- PW-1), who is a material and key witness in the case.

9. In the light of the relief claimed by the plaintiffs against the revisionist (defendant No.1) and others in the case on hand, denying them right to contest the relief by closing their right to cross-examine the material witness would certainly result in serious prejudice to them. Furthermore, it is emphasized that a party should be allowed to contest the matter on merits rather than scuttling their rights on rigid grounds. Deciding a dispute after

hearing both the parties is deemed preferable, and a technical approach leading to closure of contesting doors should be avoided, moreso, when other party can always be compensated with cost. In the circumstances, when evidence of plaintiffs was yet to be concluded, the learned Court should have granted an opportunity to the defendants to cross examine the witness Harleen Kaur (PW-1). In this regard, the impugned order does not withstand the judicial scrutiny.

10. In the circumstances, to do complete justice between the parties, I believe one opportunity to petitioner-revisionist to cross examine the witness Harleen Kaur (PW-1) enabling him to put forth his stand before the Court to the assertions and allegations raised by the plaintiffs against them should be granted, but that can only be on punitive terms. Accordingly, impugned order dated 18.10.2023 (Annexure P-3) is set aside, contingent upon payment of Rs.2000/- as costs payable by the petitioner-revisionist to the plaintiffs. It is made clear that petitioner-revisionist will have one opportunity to cross-examine the witness (PW-1) and shall not seek any adjournment in this regard. Learned lower Court shall give one effective opportunity to petitioner-revisionist to conduct cross-examination on Harleen Kaur (PW-1). If the petitioner-revisionist fails to comply with the above directions, he will forfeit his right to cross-examine the witness.

11. Accordingly, revision is disposed of in above terms.

12. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

12.01.2024

Rimpal

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