

**P vs.r**

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**Court :** Delhi

**Decided On :** Jul-19-2018

**Appellant :** P

**Respondent :** R

**Judgement :**

\$~2-FM \* % + IN THE HIGH COURT OF DELHI AT NEW DELHI CM(M) 124/2018

P R Date of Decision:

19. h July, 2018 Through: Mr. Viraj Datar, Mr. Vineet Jhanjji .....

... Petitioner

and Mr. Imran Moulaley, Advocates. versus ..... Respondent Through: Ms. Suman Arora, Advocate. CORAM: HON'BLE MR. JUSTICE J.R. MIDHA

**JUDGMENT**

(ORAL) 1. The petitioner has challenged the order dated 15th December, 2018 whereby the learned Family Court dismissed the petitioners application for waiver of cost of Rs.10,000/- and closed the opportunity of the petitioner to cross-examine the respondent (PW-1).

2. Learned counsel for the petitioner seeks one opportunity to cross examine the respondent. Learned counsel for the petitioner submits that the petitioner shall pay the cost of Rs.10,000/- imposed by the learned Family Court.

3. Learned counsel for the respondent opposes the petitioner prayer for one opportunity to cross examine the respondent. Reliance is placed on Sujata Aggarwal v. Ravi Shankar Aggarwal, CM(M) 1146/2007 decided on 16th October, 2008. CM(M) 124/2018 Page 1 of 4 4. In A. v. T., 2018 SCC OnLine Del 9395, this Court has held that cross-examination of a witness is a very valuable right and it should not be closed in undue haste. The relevant portion of the said judgment is reproduced hereunder: 7. This Court is of the view that it is the duty of the Courts to search the truth and then do justice; this is the very object for which Courts are created. The Courts have to remove chaff from the grain to separate falsehood from truth. The matrimonial litigation begins with parties mounting claims on each other, which are often exaggerated and are magnified to such an extent that the truth and falsehood become so inextricably mixed up, that it is difficult, if not impossible, to separate them.

8. It becomes even more difficult to find the truth if the right to file the written statement or the right to lead evidence or right of cross-examination of any witness is closed in undue haste. Therefore, in matrimonial litigations, the Family Courts should take due care and caution in closing the valuable right to file the written statement or to lead the evidence or the right of cross-examination of any witness.

9. In Gajanan Laxman Bhalchandra v. Rangrao Amrutrao Deshpande, 1980 Mah LJ821 the Division Bench of the Bombay High Court observed as under:-

"is not The very weapon of cross-examination would stand scuttled. Cross-examination a mere continuation of examination-in-chief nor is it in all cases and circumstances supposed to fall within the routine strait-jacket formula as of examination in chief. Indeed, to the contrary. It is a very effective instrument and a powerful searchlight to draw out the truth and further the cause of justice. Its object inter alia is to impeach the very credit of the concerned witness and shake his entire testimony. (Emphasis Supplied) 10. In Nandram Khemraj v. State of Madhya Pradesh, 1995 Cri.L.J.1270, the Madhya Pradesh High Court noted that CM(M) 124/2018 Page 2 of 4 weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-chief.

The relevant portion of the said judgement is reproduced herein under: in examination-in-chief. By It is to be noted at this juncture that weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined the process of cross-examination the defence can test the evidence of a witness on anvil of truth. If an opportunity is not given to the accused to separate the truth from the evidence given by the witness in examination-in-chief, it would be as good as cutting his hands, legs and mouth and making him to stand meekly before the barrage of statements made by the witnesses in examination-in-chief against him for sending him to jail. Law does not allow such thing to happen. (Emphasis Supplied) 5. In the facts and circumstances of this case, the petitioner is granted one opportunity to cross examine the respondent on 31st July, 2018, date already fixed before the Family Court. The petitioner shall pay the cost of Rs.10,000/- to the respondent before commencing the cross-examination.

6. If the petitioner does not commence the cross-examination on 31st July, 2018, the petitioners right to cross-examination to the respondent shall be closed by the Family Court. However, if the respondent is not present in Court on 31st July, 2018, the learned Family Court shall fix the date for his cross-examination. It is further clarified that if the cross-examination of the respondent commences on 31st July, 2018 but is not concluded on the said date, the Family Court shall fix a short date for recording the cross- CM(M) 124/2018 Page 3 of 4 examination of the respondent. 7.

8.

9. The petition is disposed of in the above terms. Record of the Family Court be returned back. Copy of this judgment be given dasti to counsels for the parties under signatures of the Court Master. JULY19 2018 ds J.R.MIDHA, J.

CM(M) 124/2018 Page 4 of 4

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