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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1355 of 2015 (O&M)

Date of decision: May 11, 2015

Vijay Kumar

.....Petitioner

Versus

Ashok Kumar Garg

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Arvinder Arora, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 30.01.2015.

Learned counsel for the petitioner has submitted that in his cross-examination, respondent was specifically asked as to whether he wanted to sell the property in question for ₹80,00,000/-. Therefore, the conversation recorded by way of Compact Disc (CD), was liable to be sent for comparison.

Respondent has sought ejectment of the petitioner by moving a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction), Act, 1973 qua the shop in question. During the pendency of the petition, petitioner moved an application for directing the respondent to give sample of his voice for comparison qua the conversation recorded by way of CD. The learned trial Court while dismissing the application, has held as under:

“After hearing the rival contentions of the learned

counsel for the parties and perusal of the case file, this court is of the considered view that the alleged CD in which conversation is recorded between the petitioner and father of respondent has been in the knowledge of respondent since April, 2013. The respondent appeared in the present petition on 11.07.2013 and written statement was filed on 19.09.2013. After that the case was fixed for petitioner's evidence on 11.10.2013 and the same was closed by the petitioner on 28.08.2014. During the cross examination of petitioner's witness, neither a question nor any suggestion was put to them regarding the alleged CD conversation. If the CD conversation was relevant in the present case, questions should have been put to the witnesses of petitioner and moreover the respondent should have mentioned in his written statement about the alleged CD conversation. After that the case was fixed for evidence of the respondent. The respondent had availed 4 effective opportunities to conclude his evidence but instead of adducing evidence, on 30.10.2014 the counsel for the respondent moved present application which is just a delay tactics. Accordingly in view of the aforesaid discussions, the present application is hereby dismissed being devoid of merits with cost of Rs.500/-. Now case is adjourned to 26.02.2015 for evidence of the respondent at own responsibility. It shall be the last and final opportunity."

The reasons given by the trial Court while dismissing the application are sound reasons. The alleged CD, now sought to be proved on record, relates to conversation between the respondent and the father of the petitioner in April, 2013. However, the said conversation was never pleaded by the

respondent in the written statement. Respondent was not confronted with the said conversation in his cross-examination. In these circumstances, the trial court rightly held that the application moved by the petitioner was liable to be dismissed.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 11, 2015

m.singh