

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Sr.No.222

CR-5769-2014

Decided on: 15.05.2015

KAMLESH GUPTA

.....Petitioner

versus

SATYANARYAN ETC

.....Respondents

CORAM HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. Abhishek Singla, Advocate, for the petitioner.

Mr. Nipun Vashist, Advocate, for the respondents.

K.KANNAN, J (ORAL)

The husband who sought to give evidence on behalf of his wife in a suit for injunction was resisted in an attempt by the defendant to say that the husband is not competent to give evidence on behalf of wife, in spite of the fact that the plaintiff produced although special power of attorney.

I cannot understand why even a special power of attorney is necessary. The objection taken is frivolous and is bound to be rejected in the light of Section 120 of the Evidence Act. Section 120 of the Evidence Act empowers a person to speak on behalf of the spouse in all civil proceedings.

The counsel makes a reference to a judgment of the Supreme Court in **Janki Vashdeo Bhojwani versus Indusind Bank Ltd. 2005(1) RCR (Civil) 240.** The Court was dealing with a power of attorney who was trying to give evidence on behalf of the principal and that the Court held that if a party does not depose personally, he will be deemed to have failed to prove his case.

This decision is not applicable for the Court who was not dealing with an evidence offered by the spouse on behalf of a spouse.

The rejection of the plea by the Court below is erroneous

CR-5769-2014

-2-

and was an ignorance of the provisions of the Evidence Act. The order impugned is set aside and the revision petition is allowed.

(K.KANNAN)
JUDGE

15.05.2015
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