

Civil Revision No.4943 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4943 of 2014

Date of Decision: 12.12.2016

Navjot Dubey

-- Petitioner

versus

Amit Kumar and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.R.S.Chauhan, Advocate
for the petitioner**

**Mr. R.D.Sharma, Advocate
for respondent No. 1**

Rekha Mittal, J.

The present petition directs challenge against order dated 11.7.2014 passed by the District Judge, Pathankot whereby application filed by Amit Kumar husband of the petitioner-respondent No. 1 for adducing secondary evidence has been allowed.

Perusal of the record would reveal that the

respondent/petitioner who has filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage of respondent No. 1 with the petitioner filed an application for appointment of local commission for taking voice samples of the husband and wife for comparison with audio recording in a compact disk (CD) by the forensic science laboratory, Kharar. Reply to the application was filed by the petitioner-wife raising serious objections. When the respondent-husband was asked to disclose if CD is a primary evidence of the alleged recording or otherwise, another application was filed under Section 65 read with Sections 65-A and 65-B of the Indian Evidence Act for permission to adduce secondary evidence. Reply to the application was filed by the petitioner-wife resisting claim of the respondent-husband.

The learned trial court without assigning any reason much less advertent to rival contentions of the parties disposed of both the applications with the findings, reads thus:-

“Arguments on application for appointment of Local Commission for taking voice sample filed by the petitioner is allowed. The petitioner is allowed to prove such contents of CD by way of leading secondary evidence.”

The manner in which the trial court has disposed of the applications shows complete non-application of mind and the order appears to be totally arbitrary, whimsical and illegal, therefore, cannot be allowed to sustain and ordered to be set aside.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the matter is remitted to the trial court for decision of the applications afresh after hearing the parties, in accordance with law.

(Rekha Mittal)
Judge

12.12.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No