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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAT.APP.(F.C.) 35/2017**

NIDHI TREHAN

..... Appellant

Represented by: Ms.Babita Seth, Advocate

versus

ASHISH KHOSLA

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **16.03.2017**

CM No.8588/2017

Allowed subject to just exceptions.

Mat.A.(F.C.) No.35/2017

1. Appellant's grievance is to the fact that for recording evidence the learned Judge Family Court has appointed a Local Commissioner. As pleaded in the appeal the partial cross-examination of the respondent in the Court showed that he was evasive and thus on the facts of the instant case cross-examination of the respondent should have been completed in Court.
2. Huge pendency of cases before Family Courts is the reason for the learned Judge to direct recording of evidence before a Commissioner. Divorce proceedings initiated by the respondent in the year 2011 have reached the stage when the respondent could manage to examine himself and was cross-examined on August 09, 2016.

3. As per the amended provisions of the Code of Civil Procedure evidence can be recorded before a Local Commissioner.
4. We have perused the partial cross-examination of the respondent and do not find him to be evasive. Deposing in the year 2016, if he did not remember his landline number as of the year 2005 as also the mobile number of said vintage when he was in Hyderabad, it cannot be said that the respondent is or was evasive. We find that learned counsel for the appellant has not put any supplementary questions to the respondent asking him to respond whether a particular landline number or mobile number was his when he was in Hyderabad in the year 2005.
5. We find that the Local Commissioner appointed is a retired Additional District and Sessions Judge and had served in the District Judiciary for more than two decades. He is an experienced person and certainly would be in a position to control an evasive witness.
6. We dismiss the appeal.
7. But a direction needs to be issued. After the impugned order was passed, on the ground that the same had been challenged in appeal the appellant did not cross-examine the respondent before the learned Local Commissioner who closed appellant's right to cross-examine the respondent.
8. On an application which the appellant is permitted to file praying to be permitted to cross-examine the respondent, the application to be filed before the learned Judge Family Court, the learned Judge would sympathetically consider the same and pass necessary orders and would keep in view the fact that when the learned Local Commissioner closed appellant's right to cross-examine the respondent the instant appeal had

been filed in this Court.

9. No cost.

CM No.7740/2017 & CM No.8587/2017

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

MARCH 16, 2017

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