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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1221/2016 & CM APPL. 44171/2016**
DR I P SINGH Petitioner
Through: Mr. AP Dhamija, Adv.

versus

M P JAIN & ANR Respondent
Through: Mr. RBS Chauhan, Adv. for R-1.
Mr. LK Singh, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **18.01.2019**

Vide the present petition, the petitioner seeks setting aside of the impugned order dated 12.08.2016 of the Court of the ADJ-14. Central in CS No.10A/2016 with it having now been submitted that the date of the impugned order is in fact 05.08.2016 and not 12.08.2016.

Vide the said order an application under Section 137 of the Indian Evidence Act, 1872 filed by the defendant no.1 i.e. the present petitioner vide which the present petitioner i.e. the defendant no.1 to the said suit CS 10A/2016 had sought that the defendant no.1 i.e. the present petitioner be permitted to re-examine DW-1 and DW-3, the witnesses in the suit had been discharged. It has been submitted on behalf of the petitioner during the course of submissions made that the request for re-examination of the said witnesses in the suit was made in view of a CD of a conversation between the respondent nos.1

and 2 herein with a witness Shri Ramesh Kumar examined as DW-3. It has been submitted on behalf of the petitioner that though there was such mention of a conversation between the respondent nos.1 & 2 and the DW-3 in the affidavit of the petitioner as placed before the learned trial Court, the requisite certificate under Section 65(B) of the Indian Evidence Act, 1872 could not be placed on record and that thus the petitioner has sought recalling of the witnesses DW-1 & DW-3.

The prayer is vehemently opposed on behalf of the respondent nos.1 & 2 submitting to the effect that in the absence of any pleadings in relation to any such conversation between the respondent nos.1 & 2 and DW-3 in the written statement of the defendant no.1, the prayer made by the petitioner herein i.e. the defendant no.1 cannot be granted.

A bare perusal of the impugned order dated 05.08.2016 of the learned trial Court brings forth that an application under Order VI Rule 17 of the CPC that had been filed by the present petitioner i.e. the defendant no.1 to plead in relation to the factum of a voice recording had been declined vide order dated 24.11.2015. In reply to a specific Court query it has been submitted on behalf of the petitioner i.e. the defendant no.1 in CS 10A/2016 by learned counsel for the petitioner that the said order dated 24.11.2015 had not been challenged. Apart from the factum that the said order dated 24.11.2015 not granting permission to the defendant no.1 i.e. the petitioner herein to bring forth the aspect of the factum of voice recording between the respondent nos.1 & 2 and witness DW-3,

having not been allowed, it is significant to observe that the application seeking the said amendment had been filed after a delay of eight years. As has been rightly observed by the learned trial Court that vide the application that had been filed by the petitioner under Section 137 of the Indian Evidence Act, 1872, the petitioner was indirectly seeking to do what had already been declined vide the proceedings dated 24.11.2015. There is no merit in the prayer made by the petitioner.

The petition and the accompanying application are thus declined.

ANU MALHOTRA, J

JANUARY 18, 2019

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