

31 Civ DJ 4/2014 9041/16
GURMEET KAUR Vs. DEPAL SINGH ANR.

30.10.2025

Present Shri Sanjay Sawhney, Ld. Counsel for plaintiff.

Shri Parmod Kumad Singhal, Ld. Counsel for defendant.

An application under Section 151 CPC moved on behalf of the plaintiff. Arguments on the application heard.

It is submitted in the application that vide order dated 31/07/2025 the Court was pleased to direct the parties to appear before the Ld. Local Commissioner for the purposes of recording of defendant's evidence. As such the proceedings before the Ld. Local Commissioner qua the recording of the chief examination and cross examination of DW-1 namely Deepal Singh/defendant was conducted on 20.08.2025 and 03.09.2025. It is submitted that during the cross examination of the PW1, the said witness had produced a handwritten dairy in Punjabi language, written by late Smt Mohan Kaur and a CD having a video of Smt Mohan Kaur. The said documents and CD are already on the Court record. At the time of cross examination of DW1, when the contents of the said CD were to be confronted to the said witness, it transpired that the CD on the judicial file was broken into 2 pieces, and thus it could not be played and the questions relating to the contents of the said CD could not be put to the said witness appearing as DW-1. The Plaintiff had also saved the contents/video which was in the CD in a pendrive. The plaintiff, due to her ill health is presently residing with her son in Punjab, had sent a Pendrive through her husband containing the contents which were on the said broken CD, which is on the judicial file. However even video on the

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said Pendrive could not be played inasmuch as the counsel for the defendant had objected to the same on the ground that the said pendrive is not a part of the judicial record. The said pendrive is being filed along with the physical copy of the present application. A copy of the said video on the said CD was even supplied to the defendant, which has also been recorded by the Court on the 3rd page of the cross examination of PW1 held on 19.03.2019. However the counsel for the defendant during the cross examination of DW-1, showed his inability to produce the said CD stating that the same is not available with him. The plaintiff on oath states that the pendrive and the broken CD are having the same content ie. the Video of late Smt Mohan Kaur and is very material piece of evidence to slam the defence of the defendant. In these circumstances the plaintiff is not able to play the CD forming part of the judicial record, for the reason that the same is broken and pendrive is not allowed to be played as the same is not part of the judicial record. To play the said pendrive and to put the questions relating to the contents of the video on the said pendrive, it has become necessary to seek permission of the Court, thus the present application has been moved. It is submitted that the present matter is still pending for the defendant's evidence before the Ld. Local Commissioner for the cross examination of DW-2. The cross of the DW-1 is complete except the contents of the video on the said pendrive, which could not be put to DW-1 at the relevant time for the reasons stated herein above.

In reply, Ld. Counsel for defendant no. 1 has submitted that

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the contents are denied in toto except those specifically admitted. The application is misconceived, misleading, afterthought and liable to be dismissed with exemplary costs. It is submitted that any handwritten diary in Punjabi or CD containing video of late Smt. Mohan Kaur was ever proved exhibited or formally admitted in evidence during the cross examination of PW1. The said documents were merely produced but never confronted to the witness in accordance with law, nor were they marked as exhibits. Hence, they form no part of the judicial evidence. Defendant denied that the CD on the judicial file was broken into 2 pieces" at the time of cross-examination of DW-1. The pen drive is not part of the judicial record, was never produced earlier, and cannot be introduced at this belated stage. The plaintiff's claim of sending the pen drive through her husband from Punjab is vague, unverifiable and inadmissible. The defendant's counsel had rightly objected to the playing of the pen drive as it is not a judicial document. The plaintiff has failed to prove the authenticity, integrity or source of the alleged video. The video is neither proved nor admissible under the Indian Evidence Act, 1872, particularly Sections 65B, 62 & 63. No certificate under Section 65B (4) has ever been filed. He denied that the plaintiff's inability to confront the CD during DW-1's cross-examination is solely due to her own failure to prove the document in accordance with law. The cross-examination of DW-1 was completed and closed on 03.09.2025. The plaintiff cannot reopen the evidence under the garb of Section 151 CPC. The alleged video was never part of evidence, and its exclusion causes no prejudice.

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The CD was never proved, exhibited or confronted to any witness in accordance with the Indian Evidence Act.

Heard. Record perused.

The procedure is a hand maid of justice. It is now well settled that in interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding the justice is to be adopted. The procedural law is always subservient to, and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

Perusal of the record shows that the supply of copy of CD and the documents in Punjabi language is mentioned in the cross examination dated 19.03.2019 which took place before the Ld. Predecessor. The contents of the CD as well as the pendrive is a secondary piece of evidence. Needless to say that the plaintiff has to prove the contents and admissibility of the same under the Indian Evidence Act / BSA under proper provisions by filing a certificate as required. However as the CD containing some video already mentioned in the examination dated 19.03.2019 before the Ld. Predecessor and Ld. Counsel for the plaintiff submits that the pendrive contains the same contents as that in the CD, no prejudice would be caused in taking on record the said pendrive which is also secondary piece of evidence as the CD on record found to be broken.

Accordingly, the application moved on behalf of the plaintiff for taking on record the pendrive and for further cross examination of DW1 by playing the contents of pendrive stands **allowed**. Copy of the

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pendrive has already been supplied to the Ld. Counsel for the defendant alongwith the application.

Put up for further cross-examination of DW1 for 24.11.2025.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/30.10.2025