

(2014) 02 P&H CK 0193

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 4018 of 2012 (O&M)

Hari Chand

APPELLANT

Vs

Nitu Bala

RESPONDENT

Date of Decision: Feb. 13, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 4
- Evidence Act, 1872 - Section 112, 4
- Hindu Marriage Act, 1955 - Section 13

Citation: (2014) 3 DMC 844 : (2014) 175 PLR 6**Hon'ble Judges:** Sabina, J**Bench:** Single Bench**Advocate:** A.D.S. Sukhija, Advocate for the Appellant; Arun Gosain, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Sabina, J.

Petitioner has filed this petition challenging the order dated 06.04.2012 (Annexure P-3), whereby application moved by the petitioner under Order 26 Rule 4 of the Code of Civil Procedure, 1908 for permission to examine Dr. Reita Ghosh as a witness, was dismissed. I have heard learned counsel for the parties and have gone through the record available on the file carefully.

2. In the present case, petitioner has sought decree of divorce by moving a petition u/s 13 of the Hindu Marriage Act, 1955 on the ground of cruelty and adultery. However, the adulterer has not been impleaded as a respondent. During the pendency of the petition, petitioner moved an application for permission to examine Dr. Reita Ghosh by issuing a commission to prove the Deoxyribonucleic Acid (in short "DNA") report.

3. Sections 4 and Section 112 of the Indian Evidence Act, 1872 (in short "Act") read as under:-

Section 4:- May Presume:- "Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

Shall Presume:- Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

Conclusive proof:- When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Section 112:- Birth during marriage conclusive proof of legitimacy:- "The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

4. Thus, as per Section 112 of the Act, a child born within the continuance of a valid marriage, shall be treated as a conclusive proof of the legitimacy of the said child. Petitioner, by examining the doctor as a witness wants to establish DNA report to the effect that he was not the father of the child born to the respondent. However, in view of Sections 4 and 112 of the Act, the learned trial court had rightly dismissed the application moved by the petitioner especially when the adulterer has not been impleaded as a respondent. Hence, no ground for interference is made out.

Dismissed.