

**CS No. 56703/16**

**Atma Ram Properties Vs. M/s. Embassy Restaurants**

**05.08.2019**

**Present:** Shri Amit Sethi, Ld. Counsel for the plaintiff.  
Ld. Counsel for defendant.

Vide separate order of even date, application under Order 7 Rule 11 CPC moved on behalf of defendants is dismissed.

Earlier LC in the present case namely Shri P K Saxena has already returned all the matters which were given to him for recording of evidence. In the circumstances, as the matter is at the stage of PE, I hereby appoint **Shri C K Chaturvedi, Retired Additional & District Judge, Phone No. 9810652722, email address: adv.ckc@gmail.com**. Both the parties are directed to approach LC within a month from the date of this order for fixing the dates for recording evidence by Local Commissioner.

The terms of the assignment of the case are as under-

**A. Assignment of case by court for recording of evidence-**

- 1. Schedule of Evidence-** Evidence shall be recorded preferably on the same day. If it is not possible on the same day, then on the next day. Evidence shall continue on day to day basis, till conclusion. Any alteration in schedule for recording of evidence if needed shall be decided by the Ld. Commissioner as per convenience of all concerned.
- 2. Supply of Dasti Copy to Parties-** Copy of such referral order shall be given dasti to all the parties with one additional copy for placing before Ld. Commissioner for compliance.

3. **Judicial File not to be sent-** It is clarified that the judicial file shall not be sent or summoned for recording of evidence by the Ld. Commissioner. A party may move an application to the Court for release of original documents filed by the party concerned for the purpose of evidence before LC after placing certified copies on record. After the evidence is completed, the party shall submit the original documents back to the court record. Further documents of one party shall not be released to other party unless necessary. However, if documents are voluminous or there is any other reason for which court file is required, it may be considered by the Court.
4. **Affidavit in Chief-** The affidavit of evidence in chief of a witness shall be prepared within two weeks of framing of issues by the Court.
5. **Sharing Copy of Affidavit in Chief-** An advance copy of affidavit may be supplied to opposite party. Even if the same is not supplied, still the opposite side shall come prepared for cross-examination as per pleadings.
6. **Production of Documents for Cross-examination-** In case the opposite side is desirous of production of any document by the witness on any other entity for the purpose of cross-examination, an application requesting the same shall be moved within two weeks of framing of issues.

**B. Recording of evidence by the Commissioner-**

1. **Place and Time-** Ld. Commissioner shall record evidence only in the Court Complex at his given address or not elsewhere. Evidence shall be recorded between 10.00 AM to 5.00 PM. It can carry on beyond

5.00 PM as well in case both parties agree. It can even be recorded on a holiday if all the stake holder are comfortable and agreeable.

2. **Chronology of Recording-** Ld. Commissioner shall proceed to record the examination by first recording the deposition of litigating party before examining additional summoned witnesses.
3. **Oath to Witnesses-** Ld. Commissioner shall give oath to the witnesses under examination as a delegate of the Court as per Oaths Act.
4. **Recording of Evidence-** The evidence shall be preferably typed on a computer or in case of non- availability shall be neatly hand written.
5. **Time Frame-** Ld. Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible but not later than within 30 days of assignment of a case, which is extendable by another 30 days in case the evidence is not concluded despite best efforts as per Order 18 Rule 4 CPC.

Both PE and DE shall be concluded within 15 days each of initiation. In case there are more than two witnesses for each side, one week per witness may be added to the 15 day period.

6. **Comfortable Sitting Space-** All the witnesses and their Ld. Counsel shall be provided comfortable sitting space.
7. **Exhibition of Documents-** Ld. Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by the either side, the objection shall be recorded in some detail and left open with an assurance that mere marking of such exhibits will not be treated as conclusive proof thereof and that admissibility of such document shall

be decided by the referral Court at final stage.

- 8. Original Documents to be Retained by Parties-** Ld. Commissioner shall make an observation in the record of evidence of all original documents produced and he shall sign the exhibits with an endorsement OSR wherever necessary.
- 9. English Language-** On the first date, when all the concerned parties appear before the Commissioner, he shall proceed to record the cross-examination and re-examination, if any, of a witness in English language.
- 10. Adjournments-** Once started the cross-examination shall be continued on day to day basis. In case of any hardship viz. ill health etc. the case can be deferred for a day or two not later than three days. **If witness of a party is present and is available for examination in chief and cross-examination but opposite party or their Counsel is not available for evidence, only one adjournment for a witness may be granted by LC subject to the condition that cost of hearing of that particular day is to be borne by the party who is seeking adjournment and that too if LC is satisfied that there are reasonable grounds for seeking adjournment for evidence that particular day. No second adjournment for cross-examining of the same witness shall be granted by LC in any circumstances. If no adjournment is sought and opposite party is absent, the LC shall close the right of cross-examination of that particular witness and proceed further with evidence as per law.**
- 11. Question-Answers-** On the request of Id. Counsel cross-examining

the witness, portions of deposition may be recorded in question-answer form and questions shall be numbered for each witness.

**12. Recording of Objections-** All the objections raised during cross-examination/re-examination shall be recorded in the deposition under titled objections and shall be left open for the decision of the Court at the stage of final arguments. Witness shall not refuse to the answer the question raised.

**13. Questions to be allowed-** In case Ld. Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer.

**14. Assisting the Witness-** In case witness is unable to understand the question put to him, Ld. Commissioner shall elaborate the same in an easy to understand manner in an impartial way.

**15. No Third Person Intervention-** Ld. Commissioner shall ensure that the witness is not assisted by his Ld. Counsel or any other third party while under cross-examination.

**16. Recording of Demeanor of Witness-** Ld. Commissioner shall record the demeanor of the witness where ever it is found pertinent and necessary for sharing with the Court.

**17. Witness to sign all pages-** Ld. Commissioner shall obtain signatures of both the sides on each and every page of recording of evidence apart from signing them himself.

**18. Copy of Evidence-** All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.

**19. Safe keep of Original Deposition-** Ld. Commissioner shall keep the

original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.

**20. Miscellaneous Proceedings-** Ld. Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court with the report.

**21. Hostile Witness-** In case a witness is sought to be declared hostile, than Ld. LC shall refer both the parties to Court within three days for exercising powers U/s. 154 Evidence Act.

**Summoning of Official Witnesses-**

1. **Summons from Court-** In case a litigating party is desirous of summoning an official witnesses, it shall obtain summons from the Court with an endorsement that witness shall appear before the address of Ld. Commissioner for recording of evidence on scheduled date, time and place.

2. **Diet Money-** Diet money shall be paid to such witness by summoning party as per rules.

**D. Advisory to Ld. Commissioner-**

1. **Impartial-** Ld. Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.

2. **Polite-** Ld. Commissioner shall be polite with the witness and other stake holder while recording of evidence.

3. **Confidentiality-** Ld. Commissioner shall maintain confidentiality during the whole process.

4. **Keeping distance-** Ld. Commissioner shall not solicit professional work from the parties.

5. **Integrity-** Ld. Commissioner shall not except remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court.

6. **Non-judgmental-** Ld. Commissioner shall not criticize the professional conduct of litigating parties, lawyers on their understanding of law of either of the parties or ridicule them in any manner.

7. **Punctuality-** Ld. Commissioner shall adhere to punctuality and shall not make excuses like he is engaged in some personal Court work etc.

8. **Coordination-** In case of any foreseen circumstances warranting change of dates of hearing, for his own case or the request of other side, he shall apprise the other side in advance via phone call, email, sms etc.

9. **No Third Party Sharing-** He shall not allow the deposition to be inspected by any third party and shall not share a copy thereof with anybody stranger without permission of the Court.

10. **Inspection-** He shall not allow any party to inspect the recorded proceedings in his absence.

**E. Remuneration of Ld. Commissioner-**

1. **Quantum-** In terms of Order 18 Rule 4 CPC the remuneration for the purposes of Commissioner shall be fixed by the Court.

2. **Mode of Payment-** Such remuneration shall be paid by the

party directly for each day's work either by way of cash, cheque or draft against due receipt.

3. **Cost to Parties-** Each party shall bear the cost of leading its evidence, separately.

4. **Fee to be paid-** Remuneration fee for recording of evidence is fixed at Rs.4,000/- per hour or Rs.10,000/- for a three hours session whichever is less, which shall not include the cost of typing, hiring of a stenographer and supply of copy of deposition. The Stenographer can either be arranged by a litigating party on its own cost or in case the same is arranged by Ld. LC, then the actual cost of typing shall be reimbursed by the party to Ld. LC.

5. **To be added as Litigation Cost-** Such payments shall be redeemable as cost of litigation at the end of the suit.

6. **LC Fees on days of adjournment-** Though fees of LC is to be borne by the parties as discussed above. **However, if before LC no effective hearing takes place due to absence of one party or adjournment is sought by one party, the cost of LC of that particular day shall be borne by the said party who has sought adjournment or who is responsible for the ineffective hearing of that particular day. It is hereby clarified that if any party wishes to cancel the date, they will inform the LC three clear days in advance regarding the same date in writing through email and by way of telephonic message also. If three clear days advance notice was not given, the fee of the LC shall be treated as cost of adjournment for that day. Further if any witness has been**

summoned through the Court for any particular day before LC, LC shall not cancel the date for that particular day as the witnesses have been summoned and accordingly proceed as per Law and get examination and cross examination conducted. If a witness is coming from outside Delhi and same is mentioned in previous order sheet, then no adjournment shall be allowed by LC without prior consent on behalf of the said witness. LC shall wait for a maximum of one hour 15 minutes from the time fixed for a party/counsel to appear. If a party or counsel do not appear within a stipulated time, LC shall proceed further as per law and need not wait further.

**F. Judicial Intervention during recording of evidence-**

1. **Parties to Cooperate-** It is expected that both the sides will cooperate with Ld. Commissioner as well as each other and record evidence in a peaceful manner.

2. **Dissolution of stalemate-** In case of any conflicting circumstances they shall resolve issues at their own level with the active help of Ld. Commissioner.

3. **Court Intervention-** However, in case of any unforeseen situation requiring judicial intervention, Ld. Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

**G. Miscellaneous Applications-**

1. **Moving the Application-** In case either of the party is desirous of moving any miscellaneous application viz. amending of pleadings, interim injunction etc. they shall share an advance copy with the

opposite side and reply thereof, if any, shall be prepared within seven days.

2. **Date of Hearing-** Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court in with the help of Reader of the Court and shall not wait till next date fixed for hearing.

3. **Evidence not to be stalled-** It is clarified that, unless Ld. Counsel is of the view that the application is such that evidence cannot be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

Put up for further proceedings on **11.12.2019**.

Copy of this order be given dasti to Ld counsel for both the parties as well as sent to LC.

**(TWINKLE WADHWA)**  
**ADJ-03/PHC/NEW DELHI**  
**05.08.2019**