

28.03.2024

Present: Mr. Sanjay Gupta, Ld. Counsel for LR's of the plaintiff.

Mr. A.N Aggarwal, Ld. Counsel for the defendant.

List of witnesses has been filed on behalf of the plaintiff.
Copy is supplied.

An application for modification and alteration of order dated 09.11.2023 has been filed on behalf of the defendant. Copy of the application is supplied.

Ld. Counsel for the defendant submits that the onus of proof of issues framed in the suit on 18.07.2019 is on the plaintiff and it was the plaintiff who was repeatedly directed to lead evidence in the present case.

He stated that repeated opportunities were granted to the plaintiff to lead evidence, but no evidence was led by the plaintiff till date.

He states that it is the plaintiff herein who should be called upon to first lead evidence.

He seeks modification of the order passed on the last date of hearing to this effect. He also requests that since several opportunities have already been granted to the plaintiff for leading evidence, the right of the plaintiff to lead evidence be closed.

Application is opposed by Ld. Counsel for the plaintiff.

He states that as per the order passed on the last date of hearing, the suit no.587/2017 is to be treated as the lead case, since it was filed prior to the institution of the present case. He submits that the issue involved in all the three cases is the same

and therefore, evidence should be recorded together in all three cases to avoid any conflicting decisions.

Arguments are heard and record is perused.

It was way back in 2019 that issues were framed and matter was listed for recording of plaintiff's evidence. Several opportunities were granted to the plaintiff for leading evidence, but no evidence was led by the plaintiff till date.

No objection was earlier taken by the plaintiff in the present case to the repeated directions of the Court that plaintiff's evidence is to be recorded.

It is only on the last date of hearing when the Ld. Main Counsel for the defendant was not present that an order was passed for common evidence to be recorded, for treating suit no.587/2017 as the lead case and for recording of evidence of the plaintiff of that case first.

The suit no.587/2017 is not even at the stage of recording plaintiff's evidence.

Replication to the amended written statement is yet to be filed in that case.

Legal heirs of the deceased defendants in that case are yet to comply with order dated 26.04.2022 by which they were directed to file affidavits in support of the amended written statement.

Merely because the suit no.587/2017 was instituted prior in time is no reason for calling upon the plaintiff of that case to first lead evidence.

Since it is the plaintiff herein who is insisting that evidence should be led together in all three cases and the fact that the

present case has already been at the stage of recording plaintiff's evidence, it is directed that the present case shall be treated as the lead case and evidence of the plaintiff in the present case will be recorded first.

The order passed on the last date of hearing is modified to this extent.

Application under consideration is accordingly disposed off.

So that evidence can be recorded expeditiously and present case can be disposed off at the earliest, this Court is of the view that a Local Commissioner can be appointed for recording of evidence.

Same is not objected to by either of the Counsels.

In view of the same, Mr. Manish Sharma, Advocate, Enrollment No.D/742/2003, Mobile No.-9811515778 Chamber No.508, Patiala House Courts, New Delhi is appointed as the Local Commissioner for recording of evidence.

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

1. Chronology of Recording- Common evidence would be recorded in cases bearing CS No.587/17, CS No.801/17 and counter claim no. 10/22. The Local Commissioner shall first record testimony of the plaintiff of the present case and his witnesses. Thereafter, evidence of the defendant of the present case and his witnesses will be recorded. Oath shall be given to the witnesses under examination as per Oaths Act by the Local Commissioner.

2. Exhibition of Documents- The Local Commissioner shall exhibit all the documents on record sought to be proved by a

party. In case of any objection to the documents being exhibited, the objection shall be recorded and left open with an assurance that mere marking of such exhibits will not be treated as the document having been proved. The objection and admissibility of such document shall be decided by this Court.

3. Original Documents to be retained by parties- The Local Commissioner will make an observation in the record of the original documents produced. He shall sign the exhibits with an endorsement 'OSR' wherever necessary and the party which produced the document may be required to show the same to the court at a later stage, if required.

4. English Language- The evidence/proceeding sheets shall be recorded by the Court Commissioner in English language. Once started, the cross-examination shall preferably continue on day-to-day basis.

5. Question & Answers- On the request of either or both the parties, the Local Commissioner may record testimony in question & answer form so that there is clarity about the deposition.

6. No Third Person Intervention- The Local Commissioner will ensure that the witness is not assisted/prompted by his Counsel or any other third party while under cross-examination.

7. Recording of Demeanour of Witness- The Local Commissioner will record the demeanor of the witness wherever it is found pertinent and necessary for sharing with the Court.

8. Witnesses to sign all pages- The Local Commissioner will obtain signatures of both the parties and witness on every page of

testimony, besides signing it himself. Uncertified copy of the evidence recorded will be provided by the Local Commissioner to the parties.

9. Safe keep of Original Deposition- The Local Commissioner will keep the original depositions in his safe custody till such time they are filed in the Court in original.

10. Miscellaneous Proceedings- The Local Commissioner will maintain a miscellaneous proceeding sheet for each day of work and will submit it in the Court with his report.

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.

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

Advisory to Local Commissioner-

i. The Local Commissioner is expected to conduct himself in an impartial and polite manner. He is expected to maintain confidentiality and shall not solicit professional work from the parties. He shall not accept remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court. He shall be non-judgmental, shall not criticize the professional conduct of litigating parties, lawyers on their understanding of law or ridicule them in any manner. He shall be punctual. In case of any foreseen circumstances warranting change of dates of recording of evidence, he shall apprise the parties in advance via phone call, email, sms etc.

ii. 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 any stranger without permission of the Court.

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

Remuneration of the Local Commissioner-

Fee to be paid- Remuneration for recording of evidence is fixed at Rs.6,000/-per sitting of two hours. For work done beyond two hours, Rs.3,000/- for each additional hour will be paid. The Stenographer will be arranged by the party whose evidence is being recorded at its own cost and in case Stenographer is arranged by Local Commissioner, then the actual cost of typing/printing shall be reimbursed by the party to the Local Commissioner. In case the evidence is recorded in the Court Complex, the Ahlmad of the Court shall provide the Court record to enable the examination of the witnesses and cost of Rs.500/- per sitting shall be paid to the Ahlmad. Ahlmad shall ensure the safe custody of the Court record during the proceedings. In case the Local Commissioner records the evidence in his office/out of Court, parties may get the certified copy of the documents, if required, for the purposes of using the same during evidence. Remuneration to the Local Commissioner and other costs shall be incurred by the party whose evidence is being led.

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

The Local Commissioner shall provide copy of evidence and proceedings of each date to both the parties through email/soft

copy and shall endeavour to complete plaintiff's evidence by the next date of hearing.

Advance copy of the affidavit of evidence be filed by Ld. counsel for plaintiff after supplying advance copy to the Ld. Counsel for the defendant.

Both the parties are directed to appear before the Local Commissioner on 25.07.2024 at 3:00 PM, on which date, the Local Commissioner will make a schedule for recording of evidence as per the mutual convenience of the Ld. Counsels and the Local Commissioner.

Since several opportunities have already been granted to the plaintiff to lead evidence, it is directed that no adjournment will be granted to the plaintiff for recording of evidence after schedule of dates is prepared by the Local Commissioner.

Local Commissioner will provide soft copy of evidence and proceedings for each date to both the parties.

On asking by the Court, Mr. Sanjay Gupta, Ld. Counsel for the plaintiff submits that his mobile no. is 9810170011 and Mr. A.N. Aggarwal, Ld. Counsel for the defendant submits that his mobile no. Is 9811258052.

Their mobile numbers have been obtained for better coordination with the Local Commissioner.

To come up before this Court on 20.12.2024.

Copy of this order be given dasti to Ld. Counsels for the parties and be also sent to the Local Commissioner immediately.

(Shirish Aggarwal)
Additional District Judge-03
Patiala House Courts, New Delhi
28.03.2024