

CS No. 1162/17
Sheetal Khurana Vs. Monica Mahajan
&
Counter Claim No. 31/18
Sheetal Khurana Vs. Monica Mahajan

19.07.2023

At 12:30 pm

Present: Sh. Himanshu Pathak, Ld counsel for the plaintiff/respondent along with plaintiff/respondent.
Sh. Ashish Aggarwal, Ld counsel for the defendant/counter claimant through VC.

Ld counsel for the plaintiff prays that plaintiff wants to withdraw the application u/O 12 Rule 6 CPC. Accordingly, the application stands dismissed as withdrawn.

At this stage, Ld counsel for the plaintiff states that issues in the present matter were framed in the year 2019, however, evidence is yet to be recorded. It is further prayed that the present matter is almost six years old and that the evidence may be recorded before the Local Commissioner. Ld counsel for the defendant has no objection to the same. Though it is also stated by him that his party might not be able to bear the fee of the Local Commissioner, however, it is made clear that the fee of the Local Commissioner would be quite nominal, nothing which the defendant cannot afford.

Accordingly, **Sh. P.K. Saxena, Retired Ld. Additional District Judge, Mobile No: 9910384668, Email ID : padamksaxena@gmail.com** is appointed as Local Commissioner for recording of evidence.

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

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1. Chronology of Recording- Ld. Commissioner shall proceed to record the examination by first recording the deposition of litigating party before examining additional summoned witnesses. Oath shall be given to the witnesses under examination as a delegate of the Court as per Oaths Act.

2. 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 (if required, 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.

3. 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 and the parties producing a 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 Ld. Counsel cross-examining the witness, if required, only certain portions of deposition may be recorded in question-answer form, in order to elicit clarity and completeness of answer.

6. 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.

7. Recording of Demeanour of Witness- Ld. Commissioner shall record the demeanour of the witness where ever it is found pertinent and necessary for sharing with the Court.

8. Witnesses to sign all pages- Ld. Commissioner shall obtain signatures of both the sides as well as witnesses on each and every page of recording of evidence apart from signing them himself. Uncertified copy of the evidence recorded shall be provided by the LC to the parties.

9. 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.

10. 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.

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 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.

Advisory to Ld. Commissioner-

i. Ld. Commissioner is expected to conduct in an impartial

manner, be polite, maintain confidentiality and shall not solicit professional work from the parties, and 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 of either of the parties or ridicule them in any manner. He shall be punctual. 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.

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 anybody stranger without permission of the Court.

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

Remuneration of Ld. Commissioner-

Fee to be paid- Remuneration for recording of evidence is fixed at Rs.6,000/-per sitting of two hours. The Stenographer can either be arranged by a litigating party on its own cost or in case the same is arranged by LC, then the actual cost of typing/printing shall be reimbursed by the party to Ld. LC. In case the evidence is recorded in the Court, 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 LC record 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.

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

Local Commissioner shall provide the copy of evidence and proceedings for each date to both the parties through email/soft copy and shall endeavour to complete the evidence positively within four months.

Both the parties are directed to contact the Ld. Local Commissioner immediately and take tentative dates for recording of evidence in the first week of August 2023. Copy of this order be handed over to both the parties and be also sent to Local Commissioner.

Relist the matter for report of Ld. Local Commissioner/final arguments now on 10.01.2024.

(Gaurav Rao)
Additional District Judge-03
Patiala House Courts, New Delhi
19.07.2023