

CS 1222/17

VINOD KAPOOR Vs. BVG INDIA LTD

22.04.2022

Present: Plaintiff in person with Ld counsel Sh. Kartik Khanna.
Ms. Kiran Singh, Ld counsel for the defendant with Sh. Naeem Khan, AR of the defendant.

Ld counsel for the defendant submits that an application u/O 14 Rule 5 CPC for framing the additional issues on facts alleged by the defendant has been filed and she submits that the issues on the facts raised in the instant application may also be framed.

Perusal of the instant application reveals that the defendant has sought framing of following additional issues :-

1. Whether the plaintiff has completed the work as per work order? OPP.
2. Whether the defendant has received the payment from ONGC for the work done by the plaintiff? OPP.
3. Whether the defendant is liable to pay the unsubstantiated claim to the plaintiff? OPP.
4. Whether the plaintiff has settled all his dues in the year 2014 after reconciliation? OPP.

During the arguments, Ld counsel for defendant submits that she does not press for additional issue no. 2 as above and the same may be dropped.

Ld counsel for the plaintiff submits that Ld Predecessor has already framed the relevant issues vide order dated 26.02.2021 and the aforesaid issues alleged by the defendant vide instant application need not be separately framed.

I have perused the order dated 26.02.2021 vide which the issues were framed by Ld Predecessor and while framing the issues, the issue no. 1 has been framed as to whether the plaintiff is entitled to the decree of sum of Rs.21,13,173/- as prayed? OPP.

The issues/facts alleged by the defendant vide instant application will have to be decided by the Court while deciding issue no. 1 which is already framed vide order dated 26.02.2021 and during the evidence defendant will have the opportunity to prove the facts alleged in the written statement and consequently, the issues which have been raised vide instant application need not be separately framed and hence, the application u/O 14 Rule 5 CPC stands dismissed and disposed of.

List of witnesses be filed within two weeks by both the parties.

Advance copy of the affidavit of evidence be filed by Ld. counsel for plaintiff with advance copy being supplied to the defendant counsel.

Ld. counsel for both the parties request for appointment of a Local Commissioner for recording of the evidence at the expenses of respective parties.

In view of the same, **Ms. Neha Rastogi, Advocate, Enrollment No. D/428/2010, Office: B-30, Ground Floor, Sector-6, Noida, UP-201301, Mobile No: 7838326908, Email ID:- neharastogi.legalcare@gmail.com** is appointed as Local Commissioner for recording of evidence.

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

- 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.5,000/-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 by the NDOH.

Put up for further proceedings on **03.11.2022**.

(Manish Khurana)
Additional District Judge-03
Patiala House Courts, New Delhi
22.04.2022