

CS DJ No.126/2017
K.P. Rana Vs. Delhi Development Authority

04.05.2024

Present : Plaintiff with counsel Sh. Akash Karan Sinsinwar.
(8882411777 akashsinsinwar@yahoo.com)
Proxy counsel Sh. Gaurav Gill for Ms. Promila Kapoor.
(9811106945 Promi.sharma@gmail.com)

Cost receipt of Rs.1,000/-, deposited in DLSA, is filed by counsel for plaintiff.

Application U/O.26 CPC is moved by plaintiff for appointment of Local Commissioner for recording of evidence.

Arguments heard on the aforesaid application. Record perused.

It is submitted by counsel for plaintiff that on 24.04.2017, the matter was adjourned for final arguments after recording evidence by both the parties, but an application U/O.18 R.17 CPC was filed by defendant's counsel on 31.05.2019 for

recalling PW-1 for cross-examination and the said application was allowed vide order dated 30.08.2019 and one opportunity was given to the defendant/DDA for cross-examination of PW-1 on 19.09.2019, but the examination of PW-1 has not been concluded by the defendant's counsel till date and therefore the present application has been filed for getting cross-examination of PW-1 recorded before the Local Commissioner.

Application is allowed and in view of the same, **Sh. Gandharv Kumar Jha, Advocate, Enrollment No. D/2891/2023, Office at: Flat No.302, T/F, Plot No.4, Site No.4, LSC, Kalkaji, near Site No.42, Delhi-110019, Mobile No. 9555890689, e-mail ID gandharvkumar@live.com**, is hereby appointed as Court Commissioner for recording cross-examination of PW-1, the expenses of which shall be borne by the plaintiff.

The terms of the assignment of case are as under:

- 1. Chronology of Recording Evidence** - The Court Commissioner shall administer oath to witness under

examination as a delegate of the Court as per Oaths Act.

2. Exhibition of Documents - The Court 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 the admissibility of such document shall be decided by the referral Court at final stage.

3. Original Documents to be Retained by the Parties –
The original documents of the parties shall be retained by them, though they will produce the same before the Court Commissioner, who shall make an observation in the record of evidence of all original documents produced and sign the exhibits with an endorsement “OSR” wherever necessary. The parties producing the original documents

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 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** - The Court Commissioner shall ensure that the witness is not assisted by his Counsel or any other third party while under cross-examination.
7. **Recording of Demeanour of Witness** - The Court Commissioner shall record the demeanour of the witness wherever it is found pertinent and necessary for sharing with the Court.

- 8. Witnesses to sign all pages** - The Court 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/herself. Uncertified copy of the evidence recorded shall be provided by the Court Commissioner to the parties.
- 9. Safe keep of Original Deposition** - The Court Commissioner shall keep the original depositions in his/her safe custody till such time they are filed in the Court in original, upon completion of each witness individually.
- 10. Miscellaneous Proceedings** - The Court Commissioner shall maintain a miscellaneous proceeding-sheet for each day of work and shall submit it in the Court with his/her report.
- 11. Summoning of Official Witnesses –**

 - (i) Summons from Court** - In case a litigating party is desirous of summoning an official witness, it shall obtain

summons from the Court with an endorsement that witness shall appear before the Court Commissioner for recording of evidence on scheduled date, time and place.

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

12. Advisory to the Court Commissioner –

(i) The Court Commissioner is expected to conduct in 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/she 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/she shall be punctual. In case of any foreseen circumstances warranting change of dates of hearing, for his/her own case or the request of other side,

he/she shall apprise the other side in advance via phone call, email, SMS, etc.

(ii) No Third Party Sharing – He/she 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/she shall not allow any party to inspect the recorded proceedings in his/her absence.

13. Remuneration of the Court Commissioner –

(i) 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 the Court Commissioner, then the actual cost of typing/printing shall be reimbursed by the party to the Court Commissioner. 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. The Ahlmad shall ensure the safe custody of the Court record during the proceedings. In case the Court Commissioner records the evidence in his/her office or out of Court, parties may get the certified copy of the documents, if required, for the purposes of using the same during evidence.

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

(iii) Once the evidence commences, the Court Commissioner is directed to make endeavour to record the evidence on day-to-day basis and in any case, not to give date of more than 10 days between the two dates. The Court Commissioner is also directed not to adjourn the matter telephonically at the mere asking of the counsels. The Court Commissioner shall provide the copy of

evidence and proceedings for each date to both the parties through email/soft copy.

(iv) In case, any adjournment is sought by any party on any given date, the cost of proceedings of that date shall be borne by the defaulting party.

(v) The Court Commissioner is directed not to give any adjournment to any party. In case any witness is not available on a particular date or the opposing counsel cross-examining the witness is not available on a particular date, their respective rights shall be closed qua the examining of that witness.

The Court Commissioner is directed to complete the recording of the evidence by next date positively.

Both the parties to appear before Court Commissioner for recording of cross examination of PW-1 on **10.05.2024**.

Put up before this Court on **03.10.2024** for final arguments.

Copy of order be given dasti to the parties and be sent to Court Commissioner.

(Navita Kumari Bagha)
ADJ-02 (South-East), Saket,
New Delhi/04.05.2024 (Jagdeep)