

CS DJ 124/19

M/S SWIKRITI TRAVELS Vs. M/S MINI POCKET OPC PVT. LTD.

26.05.2022

Present: AR of plaintiff with Sh.Sai Krishna Kumar Adv. (*Mobile No.9582185888*) *Email: saikrishnakumar26@gmail.com*

Ld. Counsel for plaintiff.

None for defendant.

Vakalatnama filed by Ld. Counsel for plaintiff.

From the pleadings of the parties, following issues are framed:

ISSUES:

- 1. Whether plaintiff is entitled to decree for a sum of Rs.17,33,550/- as prayed? OPP**
- 2. Whether plaintiff is entitled to interest, if yes, at what rate and for what period ? OPP**
- 3. Relief.**

No other issue arises or is pressed for.

List of witnesses be filed within two weeks by both the parties with copies exchanged. Advance copy of the affidavit be filed by the plaintiff counsel to the defendant counsel at least one month before next date.

Ld. Counsel for plaintiff submits that a Local Commissioner may be appointed for recording of evidence of plaintiff as well as defendant witnesses at the expenses of the plaintiff only.

In view of the same, *Ms. Rita Vashist Advocate, Enrollment*

no.D-1519/2003, office at Chamber no.674, Patiala House Court, New Delhi - 110001, Mobile no.9311278518 is appointed as Local Commissioner with direction to record the testimony of plaintiff witnesses as well as the defendants witnesses at the costs of the plaintiff only.

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 Id. 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.

11. Summoning of Official Witnesses-

i. 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.

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

12. 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.

13. Remuneration of Ld. Commissioner-

i. Fee to be paid- Remuneration for recording of evidence is fixed at Rs.5,000/-per sitting of two hours to be paid by the plaintiff. 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 her office/ 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.

Since the defendant is not present today, it is directed that Ld. LC shall give maximum 3 opportunities to the defendant to cross examine the plaintiff witness and in case, the defendant does not cross examine the plaintiff witness for 3 dates, the right of defendant to cross examine the said plaintiff witness shall automatically be closed.

Once the evidence is started, LC shall make endeavour to

conduct the recording of evidence, on day to day basis and in any case, not to give date of more than 10 *days* between the two dates. Local Commissioner is also directed to not adjourn the matter telephonically at the mere asking of the counsels. Local Commissioner shall provide the copy of evidence and proceedings for each date to both the parties through email/soft copy.

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. LC is directed to complete the recording of evidence of both the parties.

Both the parties are directed to appear before Ld. Local Commissioner on **05.07.2022**. Copy of this order be given dasti and same be sent to LC.

Put up for final arguments on **01.09.2022**.

(Munish Markan)
ADJ-02(SE)/District Courts,Saket,
New Delhi/26.05.2022

pk