

**CS DJ 9942/16**

**PUSHPA CHUTTANI Vs. AMIT BHUTTANI OTHERS**

**20.05.2022**

**Present:** Ms.Shristhi Bhargava Adv. *Mobile No.9758428999, Email*

*ID:patineshristi@gmail.com* Ld. Proxy counsel for plaintiff.

Sh.Sumit Sahrawat Adv. *Mobile No.9149111102, Email*

*ID:sumitsaharawat840@gmail.com*, Ld. Counsel for defendants no.1 to 3 with defendant no.1 (*Mobile No.9990678495*).

None for defendants no.4 and 5.

Ld. Counsel for defendants submits that defendants no.4 and 5 are siding with the plaintiff. No PW is present.

Ld. Proxy counsel for plaintiff submits that plaintiff is not well and is a resident of Mohali, Punjab and is a senior citizen aged 75 years. Ld. Counsel for plaintiff prays for appointment of a Local Commissioner for recording the testimony of plaintiff at Mohali, Punjab at the expenses of plaintiff.

Ld. Counsel for defendants submits that he has no objection if the LC is appointed.

Under these circumstances, *Sh.Ashutosh Bhardwaj Advocate, Enrollment No.P/1315/2015, Mobile No.9779458949 & 8851688748, 7814926750, Address: N-34, First Floor, Greater Kailash-I, New Delhi -*

**110048 Email ID: ashutosh.bhardwaj13ab@gmail.com** is appointed as Local commissioner to record the evidence of the said witness at Mohali, Punjab. The plaintiff shall provide the copy of the affidavit of the plaintiff witness to the defendant/ defendant counsel within 2 weeks from today failing which the right of the plaintiff to lead evidence shall liable to be closed. Thereafter, within the next one month, the LC shall fix a date when the evidence shall be recorded by the LC at the residence /any other place at Mohali/Chandigarh Punjab. The plaintiff shall make all the necessary arrangements regarding the travel, boarding, lodging etc of defendant no.1, ld. counsel for defendant no.1 as well as the Local Commissioner for the purpose of examination of the witness.

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-**

The fees of the Local Commissioner is fixed at Rs.40,000/- to be paid by the plaintiff. All the incidental expenses in carrying out the commission shall be borne by the plaintiff. The LC shall file his report positively by next date.

Copy of this order be given dasti to each party and Local Commissioner. Put up for final arguments on **23.08.2022**.

(Munish Markan)  
ADJ-02/SE/ District Courts Saket,  
New Delhi/20.05.2022

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