

CS DJ 9220/16
MS SHIV RAJ INTERNATIONAL P. LTD
Vs.
MS PATEL ENGINEERING LIMITED AND OTHERS

19.04.2022

Present : Ms. Anannya Nayyar Adv., (M.No. 9818218885 (e-mail: Manishkaushik.law@gmail.com), Ld.Counsel for plaintiff.
Sh.RiteshChaudhary Adv., (M.No.9910394267 (e-mail:ritesh.k.chaudhary@gmail.com)), Ld. Counsel for defendant no.1.
Sh. Rabindra Tiwary Adv (M.No.9971120211 (e-mail:rab.associates@gmail.com)), Ld. Counsel for defendant no.2.

No P.W. is present. No affidavit is filed.

Ld. Counsel for plaintiff and defendant no.1 agree that a Local Commissioner may be appointed for recording of the evidence of their respective witnesses at their respective expenses though Ld. Counsel for defendant no.2 is reluctant for the same.

Since it is a seven years old matter and in the given facts and circumstances, **Sh. Dilip Kumar Arya, Advocate**, Enrollment No : D-1382/2003, Address- Ch. No. 60, Western Wing, Tis Hazari Court, Delhi-54 & Office-cum-Resi: F-1/123, Sector-XI, Rohini, Delhi-85, Mobile No: 9650002778 & 9868005020, e-mail– adv.dilipkumar@gmail.com. is appointed as Local Commissioner.

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. 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.

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, Ld. Local 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. 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.

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.

The Local Commissioner is directed to complete entire evidence by next date. Both the parties are directed to appear before Ld. L.C. on **17.05.2022** for recording of evidence.

Put up for final arguments on **04.08.2022**.

Copy of the order be given dasti to both parties/L.C.

(Munish Markan)
ADJ-02/SE/ District Courts, Saket,
New Delhi/19.04.2022

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