

17.09.2024

One of the regular Stenographer is on leave today.

Present : Sh. Hemant Kaushik Ld. Counsel for plaintiff.
Sh. Prateek Yadav Ld. Proxy counsel for Sh. Manoj
Kumar Ld. Counsel for defendant.

Today, matter is listed for PE.

No PW is present.

Ld. Counsel for plaintiff submitted that PW could not appear before the court today as he is not well.

Perusal of record shows that evidence affidavit on behalf of plaintiff has already been filed on 13.09.2024. Advance copy already received as mentioned in the order dated 22.02.2024.

At this stage, Ld. counsels for the parties are apprised about the process of appointment of Local Commissioner for recording of evidence as per Order 18 R 4 CPC for expeditious disposal of the case to which the Ld. Counsel for the plaintiff agreed. The same is not opposed by the opposite party.

It is an old matter and in order to expedite the trial, this court is inclined to appoint the Local Commissioner as per Order 18 R 4 CPC. Accordingly, **Ms. Archana Kumari Advocate, Enrollment No. D-4004/16, Chamber no. F-503, Lawyer's Chamber Block, KKD Courts, Delhi-110032 (Mob. No. 6387261487, 7840819463),** is appointed as Local Commissioner for recording evidence in this case as per **Order**

18 Rule 4 (2) CPC.

The plaintiff will bear entire cost of the evidence to be done on behalf of the plaintiff @ Rs. 5000/- per day.

From the side of plaintiff, process should be coordinated by Ld. counsel for the plaintiff namely, Sh. Hemant Kaushik

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

A. Assignment of case by court for recording of evidence:-

Schedule of Evidence – Evidence shall be recorded expeditiously. If it is not possible on the same day, then on the next day. Evidence shall continue on day to day basis till conclusion. Any alteration in schedule for recording of evidence if needed shall be decided by Ld. Commissioner.

Supply of Dasti copy to parties:- Copy of such referral order shall be given dasti to all the parties.

Judicial File not to be sent:- It is clarified that the judicial file shall not be sent but if it is required, an oral request can be sent to the Ahlmad of the court and the Ahlmad/Asst. Ahlmad/Orderly shall take the file to the Local Commissioner by informing the undersigned and a cost of Rs. 500/- will be paid to him by the summoning party.

Affidavit in Chief:- The affidavit of evidence of PW/DW, if not filed earlier, be filed on record and advance copy be supplied to the opposite counsel.

Production of Documents for examination: In case any party is desirous of production of any document by the witness on any other entity for the purpose of examination, an application requesting the same may be moved before this court in advance.

B. Recording of evidence by the Commissioner-

- 1. Place and Time-** Ld. Commissioner shall record evidence **at his Chamber or Library, KKD Court Complex or any other place**, agreeable to all the parties. Evidence shall be recorded between 10.00AM to 5.00PM. It can carry on beyond 5.00 PM as well in case both parties agree.
- 2. Chronology of Recording-** Ld. Commissioner shall proceed to record the examination by first recording the examination in chief by tendering the affidavit and then cross examination.
- 3. Oath to Witnesses-** Ld. Commissioner shall give oath to the witness under examination as a delegate of the Court as per Oaths Act.
- 4. Recording of Evidence-** The evidence shall be preferably typed on a computer or laptop to be arranged by the LC.
- 5. Time Frame-** Ld. Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible.
- 6. Comfortable Sitting Space-** All the witnesses and their Ld. Counsel shall be provided comfortable sitting space.
- 7. 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 or marking of the documents, the objection shall be recorded 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.
- 8. 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 exhibit with an endorsement “OSR” wherever necessary.
- 9. English Language-** The Local Commissioner shall record the

evidence in English language.

10. Adjournment- Once started, the cross-examination shall be continued on day to day basis. In case of any hardship viz. Ill health etc. the case can be deferred. **It is made clear that the Ld. Local Commissioner can impose any cost to the extent of Rs. 2000/- for a single default on the defaulting party/counsel, payable to the opposite party/counsel and the Ld. LC in part or full.** After giving three opportunities, if a party/counsel does not come forward for recording of evidence, LC is at liberty to close the evidence of the defaulting party.

11. Question-Answer- On the request of Ld. Counsel cross-examining the witness, portions of deposition may be recorded in question-answer form.

12. Questions to be allowed- In case Ld. Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer.

13. Assisting the Witness- In case witness is unable to understand the question put to him, Ld. Commissioner shall elaborate the same in an easy way to understand.

14. No Third Person Intervention- Ld. Commissioner shall ensure that the witness is not intervened by his Ld. Counsel or any other third party while under cross-examination.

15. Recording of Demeanor of witness- Ld. Commissioner shall record the demeanor of the witness wherever it is found pertinent and necessary for sharing with the Court.

16. Witness to sign all pages- Ld. Commissioner shall obtain signatures of both the sides on each and every page of recording of evidence apart from signing them himself.

17. Copy of Evidence- All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.

18. Safety of original deposition- Ld. 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.

19. 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.

C. 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 address of 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.

D. Advisory to Ld. Commissioner:

1. **Impartial-** Ld. Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.

2. **Polite-** Ld. Commissioner shall be polite with the witness and other stake holder while recording of evidence.

3. **Confidentiality-** Ld. Commissioner shall maintain confidentiality during the whole process.

4. **Keeping distance-** Ld. Commissioner shall not solicit professional work from the parties.

5. **Integrity-** Ld. Commissioner shall not except remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court.

6. **Non-judgmental-** Ld. Commissioner 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.

7. **Punctuality-** Ld. Commissioner shall adhere to punctuality and shall not make excuses like he is engaged in some personal court work etc.

8. **Coordination-** 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.

9. **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.

10. **Inspection-** He shall not allow any party to inspect the recorded proceedings in his absence.

E. **Remuneration of Ld. Commissioner:-**

1. **Quantum-** In terms of Order 18 Rules 4 CPC the remuneration for the purposes of Commissioner shall be fixed by the Court.

2. **Mode of Payment:-** Such remuneration shall be paid by the party directly for each day's work either by way of cash, cheque or draft against due receipt.

3. **Fee to be paid:-** Fee for recording of evidence is fixed at **Rs. 5000/- per day** (which shall include the cost of typing, hiring of a stenographer/typist and supply of copy of deposition). As offered and agreed, the said fees shall be paid by the plaintiff for all the PWs towards examination in chief as well as cross-examination.

4. **To be added as Litigation Cost-** Such payments shall be redeemable as cost of litigation at the end of the suit. The Local Commissioner is directed to file statement of amount received from the parties along with his report after conclusion of evidence.

F. Judicial Intervention during recording of evidence-

1. **Parties to Cooperate-** It is expected that both the sides will cooperate with Ld. Commissioner as well as each other and record evidence in a peaceful manner.
2. **Dissolution of stalemate-** In case of any conflicting circumstances parties shall resolve issues at their own with the active help of Ld. Commissioner.
3. **Court Intervention-** However, in case of any unforeseen situation requiring judicial intervention, Ld. Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

At request, the copy of this order be given dasti to the parties / their counsels /their ARs and the Local Commissioner. **Local commissioner will call the counsels/parties for recording evidence.** Parties are directed to file list of witnesses along affidavit in evidence before this court in the meantime with advance copy to the opposite counsel. Parties shall appear before the Ld. Local Commissioner on 04.10.2024 at 10.30 AM. Ld. LC will record the evidence by giving date not more than 7-10 days. Report be filed by the Local Commissioner on or before the next date of hearing.

Matter be listed before this court for report of LC on 05.12.2024.

(Gaurav)
District Judge-01/ SHD
KKD/Delhi/17.09.2024