

MS. SONIA MALIK Vs. JOGINDER MOHAN KUMAR

09.09.2025

Present Shri Shakunt Jhala, Ld. Counsel for plaintiff through VC.

Defendant no. 1 in person.

Shri Abhisehk, Ld. Proxy Counsel for Ld. Counsel Shri Alok for all the defendants.

Matter has been listed in the wrong category in the cause list by Reader of the Court. Reader is warned to remain careful in future and to maintain the cause list properly.

Ld. Counsel for the defendants has filed list of witnesses alongwith evidence by way of affidavit of all defendants. Copy supplied.

Ld. Counsel for the defendant submits that defendants are not calling the witness mentioned at S. No. 6 Shri Vineet Kumar Sharma that is why his evidence affidavit has not been filed.

Order of appointment of Local Commissioner is as under :

To achieve timely and expedient disposal on this case, a decision is arrived at for recording evidence by way of Court Commissioner as provided under Order 18 Rule 4 CPC. **Defendant** evidence in this case shall be recorded before Ld. Local Commissioner **Sh. Sanskar Nigam, Enrollment no. D/5194/23 Office at chamber no. 49/42B, East Laxmi Market, Delhi having mobile no. 8810676388** who is a young Advocate.

2. From the side of plaintiff, process should be coordinated by Ld. counsel for the plaintiff, Shri Shakunt Jhala (Mob. No. 99711969550)

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and from the side of defendant, Sh. Alok Kumar, (Mob. No. 9971859494).

The terms of the assignment of the case for **defendant** evidence are as under:-

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

1. **Schedule of Evidence:-** Evidence shall be recorded expeditiously and in any case should be completely recorded within 30 days from the first date before the Ld. LC. Ld. LC shall fix a date within seven days from this order after consulting Ld. Counsels for both the parties. 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.

2. **Judicial File not to be sent:-** It is clarified that the judicial file shall not be sent ordinarily during examination, but if it is required, a written/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.

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

4. **Production of Documents for examination:** In case any party is desirous of production of any document by the witness or 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-

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1. **Place and Time-** Ld. Local Commissioner shall record evidence **at his Chamber, or at the Library, Tis Hazari Courts complex or any other place**, agreeable to both the parties. Evidence shall be recorded as per convenience of the Local Commissioner. It can carry on beyond 5.00 PM as well if both parties agree. It can even be recorded on a holiday if all the stake holders are comfortable and agreeable.
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 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. Counsels 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.Language- The Local Commissioner shall record the evidence in English language.

10. Adjournment- 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 costs to the extent of Rs. 2000/- (Rupees two thousand only) for a single default on the defaulting party/counsel, payable to the opposite party/counsel/ Ld. LC in part or full. The said costs shall be payable to the Ld. LC for his engagement on the said date as per Order 26 Rule 15 CPC and for the party/witness towards TA/DA, if he/she appears. 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. 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.

12. 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.

13. No Third Person Intervention- Ld. Commissioner shall ensure that the witness is not intervened by his/ her Ld. Counsel or any other third party

while under cross-examination.

14. **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.

15. **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.

16. **Copy of Evidence-** All interested parties shall be provided uncertified copy of the evidence recorded, free of costs.

17. **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.

18. **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 witness, 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:**

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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. 10,000/- (Rupees Ten Thousand only) for every two hour session.** Besides this, costs of typing, hiring of a stenographer/typist and supply of copy of deposition is fixed at **Rs.1000/- (Rupees One Thousand) for every two hour session.** Both parties will bear costs for examination in chief as well as cross-examination half each.
4. **To be added as Litigation Costs:-** Such payments shall be redeemable as costs 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

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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.

4. 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 the Court in the meantime with advance copy to the opposite Counsel. The parties are directed to appear before the Ld. LC on **16.09.2025 at 02:30 PM**. Ld. LC to fix the schedule of evidence recording on the first date itself, considering that the entire evidence has to be recorded within 30 days from the first date before the Ld. LC. Ld. L.C will record the evidence by giving dates which will not be more than 7-10 days apart in any case.

Report of entire evidence as recorded be filed by the Local Commissioner within 30 days from today i.e. for 03.12.2025.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/09.09.2025