

Suit has been received by way of transfer vide order No. 373/8726-8742/Cases Transfer/Gaz./PD&SJ/West/2022 dated 12-4-2022. It be checked and registered.

16-04-2022

Present: Sh. Vaibhav Kharbanda, counsel for plaintiff alongwith plaintiff. (Mobile no. of counsel for plaintiff is 97119 38098 and email id is rlbajurist@gmail.com)

Sh. Rajiv Raheja, counsel for defendant (mobile no. of counsel for defendant is 9811826000 and e-mail id is rrajive@gmail.com)

PW-1 is present.

Heard. File Perused.

Case management hearing done.

I have perused file. The case pertains to the year 2014 and case was at the stage of plaintiff evidence since 28-07-2016 and only evidence has been tendered and part cross-examination was done on 03-10-2017 and thereafter there is no progress in the case. Further, there is counter claim by other party.

This case is one of the oldest matter. Both parties are agreed that evidence may be recorded by Local Commissioner, appointed by this court. Accordingly, it is directed that plaintiff evidence and defendant evidence shall be recorded on commission basis by **Sh. Gurdeep Kumar, Retd. District & Sessions Judge (Mob. 9910384622)**. The fee of the Local Commissioner shall be Rs.5000/- per sitting. The evidence shall be recorded at Patiala House Courts, New Delhi or any other

place as per convenience of Ld. LC on date and time agreed by both parties but not later than date fixed by this court for submitting report. Plaintiff shall bear the expenses of local commissioner for recording of plaintiff evidence and defendant shall bear the expenses of local commissioner for recording of defendant evidence. Further at the time of PE, plaintiff shall arrange typist/ stenographer for recording of evidence failing which Ld. LC shall arrange same and plaintiff has to bear Rs.1000/- per day which shall be in addition to fee for LC per sitting. Same shall be situation at the time of DE.

In case any party seeks adjournment or recording of evidence is adjourned then the party at fault shall pay the expenses of the commission for the said date. Parties shall inform to the Ld. Local Commissioner about the date of recording of evidence.

Ahlmad/Nazir/Reader shall made available himself with the court file and diet money for the said purpose is fixed Rs.500/-. Local Commissioner shall record verbatim in question and thereafter record answers verbatim. In case of any objection raised by any party, same shall be recorded verbatim which shall be adjudicated by this court. Local Commissioner on the same day shall supply the copy of the evidence recorded to both the parties on their own cost and also submit typed copy in the court.

Both parties are directed to adhere to schedule which will be provided by local commissioner. Both parties shall approach learned local commissioner on the date fixed and shall pay necessary expenses.

Plaintiff's evidence shall be completed within one month and defendant's evidence will be completed one month thereafter.

Copy of the order be given to Ld. Local Commissioner by way of Whatsapp/ e-mail for information and necessary action.

On perusal of file, it is transpired that there is counter claim but same is not separately registered and is part of the same suit. As per Order IV Rule 1 & 2 CPC, every suit is required to be registered in the register provided for the same as civil suit. Order VIII Rule 6A (4) provides that the counter claim shall be treated as a plaint and governed by the rules applicable to plaints. Therefore, counter claim is required to be separately registered as plaint.

Our own Hon'ble High Court in recent judgment titled as *Indcon Boiler Ltd. v. Maeda Corporation India & Ors*, 2019 SCC Online Delhi 10096 observed that every counter claim is required to be registered by the court separately and only thereafter summons can be issued and court is also required to specifically order that counter claim is registered and summons are accepted. The Hon'ble High Court had provided guidelines regarding registration of the counter claim, to quote :-

11. In order to avoid situations as has arisen in the present case, it is further directed that all trials courts shall follow the procedure set out below, in respect of counter claim:

- a. Trial Courts to ensure that Counter-Claims are examined by the Presiding Officer at the time when the same are presented before the Court.*
- b. A specific order shall be passed directing registration of the counter claim and a number being allotted to the same.*

c. If the plaintiff or the Counsel for the Plaintiff is present, a specific order shall also be passed to the effect that service of summons in the counter claim is accepted.

d. If there is more than one plaintiff, and any of the plaintiff is not present or is not represented in the court, proper summons shall be directed to be issued to the said plaintiffs

e. the time period for filing of the written statement shall then commence.

As per law, it required to be separately registered and therefore counter claim is separately registered. Defendant is directed to file copy of written statement which shall be treated as counter claim and plaintiff shall file copy of reply/ replication which shall be treated as written statement to the counter claim and documents separately. Ahlmad is directed to get counter claim separately registered and separate both files.

Parties are directed to contact and appear before Ld. Local Commissioner on 22-04-2022.

Put up before this court on 03-08-2022 for report.

(GURDEEP SINGH)
DISTRICT JUDGE (COMMERCIAL COURT)-02
WEST DISTRICT/THC/16-04-2022