

01.04.2024

Present: Sh. Kuljeet Rawal, ld. counsel for the petitioner alongwith petitioner in person.

Sh. Rajinder Gulati and Sh. Rajeev Bhasin, ld. counsel for respondent no. 2, 3 & 4,

Vakalatnam has been filed on behalf of R-2, 3 & 4. Ld. counsels for R-2, 3 & 4 submit that they have been recently engaged by the respondents and adjournment may be given to them for cross-examination of witnesses of the petitioner. .

Ld. counsel for the petitioner submits that PW-1 Sh. Gurbir Singh is present for his examination but he could not obtain the certified copies of the pleadings of other cases, which are being relied by PW-1, so he needs one adjournment for procuring the said certified copies as well as for summoning the judicial record of other cases. Heard. Allowed.

Ld. counsel for the petitioner further submits that he wants to examine total three witnesses excluding official witnesses i.e. PW-1 and other two are the attesting witnesses of the Will. He further submits that petitioner is a senior citizen and the trial of his suit may be expedited. He requests the court to appoint Local Commissioner for recording the evidence of the petitioner and the petitioner is ready to bear the expenses of the Ld. Local Commissioner.

Ld. counsel for respondent submits that he has objection if Local Commissioner is appointed for recording evidence on behalf of

petitioner. He further submits that these types of cases are sensitive in nature and the evidence in the present case should not be recorded before the ld. Local Commissioner. Heard. The apprehension of ld. counsel for the respondents are not plausible as proper directions for recording the evidence can be given to the Ld. Local Commissioner and in case any legal issue arises then the parties are at liberty to approach this court for resolving that legal issues.

By exercising power under order 18 rule 4 CPC the request of ld. counsel for the petitioner is allowed and Sh. Dev Gautam, Advocate, (***Enrollment number D-2484/2019, Mobile No. 7838707783***) is appointed as Local Commissioner for recording evidence on behalf of petitioner.

Ld. Local Commissioner has been given guidelines that evidence shall be recorded preferably on the same day and if it is not possible on the same day, then on the next day and recording of evidence shall be continued on day to day basis till conclusion. Any alteration in schedule for recording of evidence, if needed, shall be decided by the Local Commissioner as per convenience of all concerned parties. Ld. Local Commissioner shall record evidence at suitable time and venue as per his convenience and convenience of all parties.

Ld. Local Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible but not later than within 90 days of assignment of the case. Once

recording of evidence of witness has 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 for a shorter possible date.

Ld. Local Commissioner shall exhibit all the documents sought to be proved by the witnesses, on record. In case of any objection to the exhibition of any of the documents raised by either party, the objection shall be recorded in detail and left open with an assurance that mere marking of such exhibits will not prove the document and that admissibility & proof of such documents shall be decided by the referral court at the final stage. Ld. Local Commissioner will categorically mention with the exhibited photocopy document as OSR, in case, original documents are seen & returned. In case, Ld. Local 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.

Fee of Ld. Local Commissioner is fixed at Rs. 12,000/- for recording evidence of petitioner. The fee shall be payable by the petitioner whose evidence is recorded by the Local commissioner. Intimation of appointment be sent to the Local Commissioner.

Ahlmad is directed to visit the place of recording of evidence with case file and his fee is fixed as Rs. 750/- per hearing. Ahlmad shall ensure safety of the judicial record. However, in case adjournment is sought by any of the parties, cost for that day shall be borne by the party seeking adjournment. All payments shall be

redeemable as cost of litigation at the end of the suit.

Parties are directed to appear before Ld. L.C. within two weeks on the mutually decided date. The date, time and venue shall be fixed by the Local Commissioner as per mutual convenience of the parties.

Put up for report of Local Commissioner on 25.07.2024  
Advance copy of affidavit in evidence be supplied to the opposite party.  
Appropriate steps be also taken for summoning of witnesses by the petitioner by filing application for summoning of witnesses and by depositing the PF. Diet money to the witnesses be paid on the spot.

*Copy of the order be given dasti to both the parties and sent to the Local Commissioner.*

(SHIV KUMAR)  
ADJ-02, West Distt.Tis Hazari Courts  
Delhi: 01.04.2024