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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TEST.CAS. 65/2010**

**VINAY KHANNA**

..... Petitioner

Through: Ms. Mala Goel and Ms. Parvinder  
Advocates.

versus

**STATE & ORS**

..... Respondents

Through: Mr. Sandeep P. Agarwal, Senior  
Advocate with Mr. Rajesh Pathak and  
Ms. Tanya Chanda, Advocates for  
R-3.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**ORDER**

% **07.03.2024**

**I.A. 5441/2024 (u/S 151 r/w Order XXVI Rules 16 & 16-A r/w Sections 63, 87 of the Indian Succession Act, 1924 r/w Sections 68, 101, 102, 103, 148, 149, 150, 154, 165 of the Evidence Act, 1872)**

1. By way of present application, the applicant/petitioner seeks partial recall of the Order dated 29.11.2023.
2. It is submitted in the application that the present Probate Petition has been filed in respect of the registered Will dated 08.08.1983 executed by the mother of the applicant/petitioner, namely, Smt. Indira Khanna, to which her brother, Shri Raghubir Chand Mehra was the attesting witness. The other attesting witness are Smt. Dolly Mehra, daughter-in-law of Late Shri Jagdish Chand Mehra (who was also the brother of Smt. Indira Khanna). The Will dated 08.08.1983 also bears the signatures of Shri Satnam Singh, Advocate

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and Mr. Mukesh Kumar Mahajan, Advocate and their names are mentioned in the petitioner's list of witnesses.

3. The case is pending at the stage of recording of evidence.

4. On 22.07.2022, the Application No. I.A. 11818/2022 under Order XXVI Rules 2 and 4 read with Section 151 of the Code of Civil Procedure, 1908 was filed on behalf of the respondent No. 3 for recording of evidence through the Local Commissioner. *Vide* Order dated 29.11.2023, in Application No. I.A. 11818/2022, the directions were passed by this Court for recording of evidence through the Local Commissioner, to which the petitioner had agreed and it was conceded that the expenses shall be borne by equally by both the parties. As a result, the Local Commissioner was appointed *vide* Order dated 29.11.2023 for recording of evidence.

5. The Local Commissioner on 14.12.2023 was informed by the counsels that Shri Raghbir Chand Mehra would be in Delhi from 19.01.2024 onwards and would be available for evidence. In view of the same, the Local Commissioner fixed the date for recording of evidence i.e., 25.01.2024 at 02:30 P.M.

6. On 25.01.2024, the respondent No. 3 filed the Letter dated 25.01.2024 stating that Shri Raghbir Chand Mehra is not coming to Delhi due to his illness and requested that his evidence may be recorded at Amritsar as his condition is precarious and expeditious recording of evidence is necessary in the interest of justice.

7. The Local Commissioner fixed the dates as 06.03.2024 at 02:00 P.M. and 07.03.2024 at 11:00 A.M. for recording of the evidence at Amritsar.

8. The applicant/petitioner submits that he apprehends that the respondent No. 3/Siddharth Khanna is influencing the attesting witness and



has contact with him; so much so if the applicant/petitioner makes the call to Shri Raghubir Chand Mehra, he neither takes the calls nor calls back and this has happened many a times in the last one year. The very fact that the Letter dated 25.01.2024 has been given by the respondent No. 3/Siddharth Khanna which further shows that he is in contact with the attesting witness.

9. It is asserted that in terms of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act, the testimony of the attesting witness is very vital. The respondent No. 3/Siddharth Khanna cannot be permitted to gain over the attesting witness.

10. The applicant/petitioner also submits that he has six other witnesses who are at Amritsar as given in the additional list of witnesses filed on 05.02.2024 and re-filled on 20.02.2024 with condonation of delay application, which is listed on 23.04.2024.

11. The applicant/petitioner further submits that since the attesting witness/Shri Raghubir Chand Mehra has been won and gained over by the respondents, and in order to ensure that the truth comes out, his evidence must be recorded in the open Court only. Therefore, it is submitted that the evidence cannot be recorded in a manner which is detrimental to the truth or is prejudiced by the respondent No. 3/Siddharth Khanna.

12. It is, therefore, submitted that in this unusual unprecedented situation and considering that the Local Commissioner does not have the powers of the Court, the Order dated 29.11.2023 may be recalled partly.

13. It is further submitted in the absence of the summons being issued to the witness, it is possible that when the Local Commissioner goes to Amritsar for recording of evidence, the attesting witness may not present himself for his testimony which would make the trip to Amritsar, futile.



14. It is, therefore, submitted that even though the learned counsel for the plaintiff had agreed on 29.11.2023 for appointment of the Local Commissioner, but it was done without the instructions from the applicant/petitioner. It is further stated that the applicant/petitioner shall make all arrangements for the attesting witness to come by flight to Delhi for recording of his evidence.

15. It is, therefore, submitted that Order dated 29.11.2023 be partly recalled and the evidence may be directed to be recorded before the Joint Registrar of this Court.

**I.A. .... /2024 (to be numbered) under Section 151 CPC, 1908**

16. Pursuant thereto, the applicant/petitioner filed the application under Section 151 CPC, in the Court in physical form.

17. In the captioned application filed by the applicant/petitioner, wherein it is submitted that the evidence of attesting witness/Shri Raghbir Chand Mehra may be recorded through video conferencing, from the premises of this Court. The Registry is directed to take hard copy of the application on record and the original documents be permitted to be shown to the attesting witness during his witness at Amritsar and that the *dasti* summons may be given for summoning of the attesting witness and also the Sub-Registrar, Amritsar.

**18. Submissions heard in detail.**

19. First and foremost, on 29.11.2023, the issues were framed and in Application No. I.A. 11818/2022 under Order XXVI Rules 2 and 4 read with Section 151 of CPC, 1908 filed on behalf of the respondent No. 3/Siddharth Khanna, to which the counsel for the applicant/petitioner had consented and given her no objection, the evidence was directed to be



recorded through the Local Commissioner. The fee of the Local Commissioner for recording the evidence was to be shared equally by both the parties. At that time as well, the applicant/petitioner had expressed her concerns about the independence of Shri Raghubir Chand Mehra, the attesting witness, but it was directed that considering his age and health, his evidence be recorded at Amritsar, Punjab.

20. The additional costs of Rs. 25,000/- was directed to be paid to the Local Commissioner.

21. Today, counsel for the applicant/petitioner has again expressed some apprehensions that the attesting witness/Shri Raghubir Chand Mehra was close contact with the respondent No. 3/Siddharth Khanna and also there is every apprehension of the attesting witness having been won and gained over. Therefore, the counsel for the applicant/petitioner has expressed her concerns about the evidence of the attesting witness/Shri Raghubir Chand Mehra being recorded through the Local Commissioner and that too at his residence at Amritsar.

22. After some arguments, learned counsel for the applicant/petitioner has agreed that the testimony of the witness may be recorded through video conferencing. Therefore, the Order dated 29.11.2023 is hereby modified in the following terms: -

- (i) The testimony of attesting witness/Shri Raghubir Chand Mehra be recorded through video conferencing by the Local Commissioner which shall be conducted from the premises of this Court.
- (ii) The Local Commissioner shall coordinate with the In-charge, Video Conferencing of this Court and fix the date for recording of testimony of the attesting witness/Shri Raghubir Chand Mehra.



23. Since, the attesting witness/Shri Raghbir Chand Mehra is 80 years old and his health is stated to be precarious, Mr. Vishal Rai, Advocate, Enrolment No. D/4334/10, Mobile No. 9958118876, is hereby appointed as the Nodal Officer who shall remain present at his residence at Amritsar at the time of recording of the evidence of the attesting witness/Shri Raghbir Chand Mehra.

24. The applicant/petitioner is at liberty to remain present in person or through his/her representative for that purpose along with the original documents, if any.

25. In case, the applicant/petitioner wants the original documents which have been filed in the Registry of this Court for confronting the applicant/petitioner and put to the attesting witness/Shri Raghbir Chand Mehra in his examination/cross-examination the Court Official be deputed by OIC Branch to take the file and the requisite documents to Amritsar on the given date on a fee fixed at Rs. 15,000/- aside from his travel and incidental expenses.

26. The Local Commissioner is at liberty to request the In-charge, Video Conferencing Room for providing the facility of recording the evidence of the attesting witness/Shri Raghbir Chand Mehra through video conferencing.

27. The infrastructure issue and fixing the date may be done within 15 days for recording of the evidence of the attesting witness/Shri Raghbir Chand Mehra.

28. All the expenses of the Nodal Officer/Official of the Court and the fee shall be borne exclusively by the applicant/petitioner.

29. Accordingly, the present applications are disposed of.



**I.A. 4336/2024 (u/S 5 of Limitation Act, 1963 r/w Section 151 of CPC, 1908)**

30. By way of present application, the applicant/petitioner seeks condonation of 54 days' delay in filing the list of witnesses.

31. List before the Joint Registrar for consideration on 23.04.2024, the date already fixed.

**NEENA BANSAL KRISHNA, J**

**MARCH 7, 2024/RS**