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

+ **CS(OS) 50/2016**

DR PREETI SETHI AND OTHERS Plaintiffs

Through: Mr. Sudhir Batra, Adv.

Versus

SUSHEEL SETHI & ORS Defendants

Through: None.

AND

+ **TEST CAS 5/2016**

PREETI SETHI Petitioner

Through: Mr. Sudhir Batra, Adv.

Versus

THE STATE AND OTHERS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.10.2018**

IA No.14490/2018 (of the petitioner in Test Cas No.5/2016 for recording of evidence on Commission)

1. The proceedings in Test Cas No.5/2016 have been consolidated with CS(OS) No.50/2016. However, file of Test Cas No.5/2016 has not been received.
2. Though on the date of framing of the issues, the counsels were not agreeable to have the evidence recorded before the Court Commission but by this application, it is stated that the petitioner / applicant is now willing to have the evidence recorded on commission since in the last nearly two years only three witnesses have been recorded.
3. The counsel for the petitioner / applicant, on enquiry states that advance copy of the application has been delivered to the opposing counsels.



4. Considering the nature of the application, need to issue notice is not felt.
5. The counsel for the petitioner / applicant on enquiry states that the petitioner / applicant is willing to bear the entire fee of the commission subject to final order as to costs.
6. The application is allowed and disposed of.

CS(OS) No.50/2016 & Test Cas No.5/2016

7. Further evidence in the proceedings i.e. Test Cas No.5/2016 as well in CS(OS) No.50/2016 be recorded on commission instead of before the Joint Registrar.
8. The date of 19th December, 2018 before the Joint Registrar is cancelled.
9. **Mr. B.S. Banerjee, Advocate [Mob. No.9818825395]** is appointed as the Court Commissioner to record evidence in the proceedings. His fee is tentatively fixed at Rs.1 lac besides out of pocket expenses to be borne initially by the petitioner in the Test Cas No.5/2016 and subject to final orders as to costs.
10. The Court Commissioner is requested to record the evidence within the Court Complex and to complete the same within six months from the date of commencement. The Court Commissioner is granted liberty to have the matter placed before the Court, if any of the parties are found delaying recording of the evidence.
11. The Registry is directed to send the file of the Test Cas/Suit at the place and time fixed by the Court Commissioner for recording of evidence.



12. The parties to appear before the Court Commissioner with prior appointment, for fixing the dates of trial, on or about 13th November, 2018.
13. The counsel for the petitioner / applicant in Test Cas No.5/2016 to inform all the opposing counsels of today's order.
14. List after the recording of evidence is completed.

OCTOBER 22, 2018

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CS(OS) 50/2016

RAJIV SAHAI ENDLAW, J

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