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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 166/2018 & CC 70/2016**
NRP PROJECTS PRIVATE LIMITED

.....Plaintiff

Through: Mr.Manu Seshadhri, Ms.Aakriti
Gupta & Mr.Sahil, Advs.

versus

INDIAN OIL CORPORATION LIMITED

.....Defendant

Through: Mr.Divjyot Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

10.07.2024

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I.A. 11247/2024

1. This application has been filed by the plaintiff praying for appointment of a Local Commissioner to record evidence of the parties in a time-bound manner.
2. It is asserted that the present suit was filed in the year 2015, seeking recovery of a sum of Rs.19,59,24,157/- along with interest from the defendant. Issues in the present suit were framed on 10.02.2017. The matter was placed for recording of the evidence. The plaintiff decided not to lead any evidence, and the defendant has produced only one witness in support of its defence as also the counter-claim. The recording of the cross-examination of the defendant's witness has been pending since 06.05.2019 and on the last date, the witness was partially cross-examined before the learned Joint Registrar (Judicial).



3. The learned counsel for the plaintiff submits that the defendant's witness as also the counsel who is to cross-examine the witness are not based in Delhi and travel from outstation. He submits that, therefore, it would be in the interest of justice that the evidence of the witness is recorded by a Local Commissioner so that unwarranted adjournment can be curtailed and the recording of the evidence can be concluded expeditiously.

4. The learned counsel for the plaintiff submits that the cost for the Local Commissioner shall be borne by the plaintiff.

5. The learned counsel for the defendant, on the other hand, submits that the defendant has always cooperated in the recording of the evidence of the defendant. He submits that part of the cross-examination of the defendant's witness has already been recorded by the learned Joint Registrar (Judicial), and the next date of hearing has also been fixed, which is not too far off. He submits that the defendant's witness shall duly appear on the next date of hearing and can be cross-examined. He further submits that the learned Joint Registrar can also be given direction to record the evidence of the defendant's witness at a fix time. He submits that the defendant, therefore, does not give his consent for the appointment of a Local Commissioner to record the evidence.

6. I have considered the submissions made by the learned counsels for the parties.

7. As noted hereinabove, the issues in the present suit were framed on 10.02.2017. The plaintiff decided not to lead any evidence in support of the case. The case has been pending for the recording of the



cross-examination of the defendant's witness since 06.05.2019. Only one witness remains to be cross-examined on behalf of the defendant. The witness has to travel from outstation. The counsel, who has to cross-examine the said witness, also travels from outstation. The Board of the Joint Registrar (Judicial) would not permit the learned Joint Registrar (Judicial) to give preference to this case for recording of the evidence. This being a commercial suit, it needs to be expeditiously adjudicated.

8. In terms of Order XVA(6)(o) of the Commercial Courts Act, 2015, the Court is empowered to delegate the recording of evidence to such authority appointed by the Court for the said purpose. The power can be exercised even without the consent of the defendant, though for cogent reasons. The learned counsel for the defendant has himself relied on a Full Bench Judgment of this Court in ***Pushpa Devi v. Bimla Devi and Ors.***, 1999 SCC OnLine Del 1036, which, *inter alia*, held as under:

“12. However where the parties do not or a party does not so consent then the discretion must be exercised judicially and for valid reasons. The mere fact that the matter is old and/or languishing would not; by itself, be a ground justifying referring the recording of evidence to a Commissioner. A matter being old and/or languishing would be a strong ground for the Court to refuse adjournments and take up trial Immediately. Thus for referring, without consent, the recording of evidence to a Commissioner the factum of the case being old must be coupled with other circumstances or reasons justifying such a course being followed. To give some examples the parties being very old if there is some



cogent reasons why the Court cannot take up trial in the near future or if there is a grave urgency to have the evidence recorded due to possibility of evidence being lost and/or not available or if there are a large number of witnesses, the Court could exercise powers under Chapter X-A. Clarified that the examples given are merely illustrative and not exhaustive.”

9. In my view, this would be a fit case where the Court should exercise its jurisdiction to appoint a Local Commissioner in spite of the objection of the defendant, especially taking into account that the plaintiff is willing to bear the cost of the Local Commissioner. It would be in the interest of justice as well as in the interest of both parties that the suit is adjudicated at the earliest.

10. Accordingly, I appoint Mr. O.P. Gupta (Retd. District Judge), Mobile: 9910384645, as a Local Commissioner to record the evidence of the defendant. The fee of the learned Local Commissioner is fixed at Rs. 15,000/- (Rupees Fifteen Thousand Only) per hearing of two hours or part thereof, apart from other expenses, to be paid by the plaintiff.

11. The counsel for the parties shall approach the learned Local Commissioner to fix the date and time for recording the remaining evidence of the defendant.

12. The file of the case shall be made available to the learned Local Commissioner as and when requisitioned for recording of the evidence. The officer deputed to carry the file shall be paid an honorarium of Rs. 2,000/-.



13. The learned Local Commissioner shall endeavor to conclude the recording of the evidence at the earliest and place the matter before the learned Joint Registrar (Judicial) with his report before the next date of hearing.

14. List on 7th October, 2024, before the learned Joint Registrar (Judicial). The next date of 27.08.2024 fixed by the learned Joint Registrar (Judicial) shall stand cancelled.

NAVIN CHAWLA, J

JULY 10, 2024/rv/as

[Click here to check corrigendum, if any](#)