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

+ **CS(OS) 1113/2010**

N.K. ARORA

..... Plaintiff

Through: Appearance not given.

versus

SUNIL ARORA

..... Defendant

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **10.10.2022**

I.A.15499/2022 (For Directions)

1. An application under Section 151 CPC has been filed on behalf of defendants.
2. It is submitted in the application that despite appointment of the Local Commissioner for recording of the evidence vide Order dated 15th October, 2019, no evidence has been recorded of the parties. After repeated requests, ultimately the examination-in-chief of the witness has been recorded on 19th September, 2022. It is submitted that the learned counsel for the defendant being the counsel for Government of NCT of Delhi was not able to appear on the date fixed. It is further submitted that the documents have been exhibited in the absence of the counsel for the defendant. A prayer is made that the proceedings before the Local Commissioner may be stayed and the



Order dated 15th October, 2019 be modified and evidence be recorded before the Joint Registrar.

3. Submissions heard.

4. During the course of the arguments it has been submitted on behalf of the defendant that the only grievance is that name of the learned Local Commissioner may be changed since the Counsel for the defendant had appeared against him in some personal litigation.

5. Learned counsel for the plaintiff submits that he has already paid certain amount to the learned Local Commissioner.

6. Learned counsel for the plaintiff may move an application for adjustment/ refund of the fee already paid to the learned Local Commissioner.

7. Considering the submissions and the facts as detailed above, the application is accordingly allowed and Mr. Kamlesh Kumar, Learned District Judge (Retired), Mobile No.9971208844, is appointed as the Local Commissioner for recording of the evidence. Learned counsel for the defendant may raise his objections in regard to exhibiting of documents before continuing with the cross -examination.

8. In view of the above, the following directions are being passed:

- i. The fees of the Local Commissioner is initially fixed at Rs. 1,50,000/- on the basis that the recording of evidence shall be concluded in eight sittings. If recording of evidence is not completed in eight sittings, an additional fee of Rs. 15000/- shall be paid to the Local Commissioner for each additional sitting.
- ii. Costs for recording of evidence shall be borne by both the



parties, subject to the final outcome in the suit.

- iii. In case, any adjournment is taken by one of the parties, the said party shall bear the costs of the said sitting. The Local Commissioner shall decide whether the adjournment is on account of the party/parties.
 - iv. The evidence will be recorded by the Local Commissioner within the High Court precinct.
 - v. In case of requirement of Court file, the Registry shall make the arrangements to send the Court file for the sitting before the Local Commissioner and Rs. 1,500/- is fixed towards the fees to be paid to the Court staff to carry the Court file and the same will be borne by the parties.
 - vi. The Local Commissioner is requested to complete the recording of evidence of the parties within six months from today.
 - vii. The parties to approach the Local Commissioner within one week for fixing dates for recording the evidence.
 - viii. The parties shall provide full assistance to the Local Commissioner for recording of evidence.
9. Both the parties are directed to appear before the Local Commissioner on 15th November, 2022.
10. Application is disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 10, 2022

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