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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 3644/2014 and I.A. 6706/2024

BHUMITRA JINDAL & ANR Plaintiffs

Through: Mr. Pawan Shukla, Adv.
versus

BRAHAM TEJ MITTAL & ANR Defendants

Through: Mr. Arvind Kumar Dua, Adv. for D-
2. (M: 8383051313)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **22.04.2024**

1. This hearing has been done through hybrid mode.
2. The present suit has been filed seeking partition of movable and immovable properties belonging to Sh. Nar Shardul Mittal. The Court has perused the matter. Directions are being sought by the Plaintiffs on the ground that the Defendant No.2 is unnecessarily delaying the recording of evidence.
3. A perusal of the order dated 6th July, 2018 would show that on the said date, issues were framed and the following directions were issued.

*“5. List of witnesses be filed within four weeks.
Evidence by way of affidavit be filed within 8
weeks by the Plaintiffs.*

*6. Evidence in affirmative shall be first filed by the
Plaintiffs. Defendants will thereafter lead evidence
in defence as also in respect of issues onus of
which is upon them. The court would thereafter
consider if the Plaintiffs are to be permitted to
lead rebuttal evidence.*

*7. The evidence shall be recorded on a day to day
basis by a Local Commissioner. Smt. Bimla*



Maken, (Retd. ADJ) is appointed as Local Commissioner. The fees of the Local Commissioner is fixed at Rs. 11,000/- (apart from out of pocket expenses) per sitting of at least two hours each. LC fees and expenses for arranging the venue and for arranging production of the record shall, shall be initially borne by the Plaintiff. The electronic records of the case shall be made available to the Local Commissioner and to the parties.”

4. Ld. Counsel for the Plaintiffs has placed on record the chronology of events that has been transpired before the Local Commissioner. The same is set out below:

<i>Order Date</i>	
<i>06.07.2018</i>	<i>Order of the Court, the evidence shall be recorded on a day to day basis.</i>
<i>27.07.2019</i>	<i>The evidence of the Plaintiffs has been completed.</i>
	<i>As no evidence affidavits filed by Defendant they were directed to file affidavits of all the witnesses with advance copy to be supplied at least 10 days before the date fixed for cross examination.</i>
<i>17.08.2019</i>	<i>No witness of the Defendant is present, no affidavit of witness filed, no list of witnesses filed. Defendant no.1 sought 4 days</i>
<i>18.09.2021</i>	<i>Defendant No.2 not filed list of witnesses or the evidence affidavits. 4 weeks' time given to file the same</i>
<i>23.09.2021</i>	<i>Defendant no.1 closed his evidence</i>
<i>09.11.2021</i>	<i>None for Defendant No.2, no witness present, no evidence affidavit, no list of witnesses</i>
<i>15.11.2021</i>	<i>No witness of the Defendant No.2. No</i>



	<i>advance copy of evidence affidavit, no list of witnesses.</i>
<i>29.11.2021</i>	<i>Defendant no.2 is present in person evidence affidavit is not filed.</i>
<i>20.05.2022</i>	<i>Cost of Rs.25000 imposed on Defendant No.2, to be deposited within 2 weeks.</i>
<i>24.05.2022</i>	<i>No witness of Defendant present. No affidavit of evidence of witnesses.</i>
<i>19.07.2022</i>	<i>List of witnesses filed but no affidavit of evidence of witnesses.</i>
<i>06.08.2022</i>	<i>Advocate for Defendant No.2 met with an accident and his leg is plastered.</i> <i>No evidence affidavit filed last opportunity granted to Defendant to file evidence affidavit within 4 weeks with advance copy.</i>
<i>17.09.2022</i>	<i>No evidence affidavit filed.</i>
<i>22.09.2022</i>	<i>Last opportunity of four weeks given to the Defendant No.2 to place his evidence affidavit on record, failing which his right to file the same shall stand closed.</i>
<i>01.03.2023</i>	<i>Evidence affidavit e-filed on behalf of Defendant No.2 hard copy of the same be filed within a week.</i>
<i>28.03.2023</i>	<i>Statement of witness can not be recorded as hard copy of the affidavit was received in the record section on 27.03.2023 day.</i>
<i>06.04.2023</i>	<i>Evidence of Defendant No.2 deferred as original document was left over in the chamber of the learned advocate Shri Arvind Dua.</i>
<i>11.04.2023</i>	<i>Cross examination of D2W-1 partly recorded.</i>
<i>06.05.2023</i>	<i>Cross examination of D2W-1 continued.</i>
<i>15.05.2023</i>	<i>Cross examination of D2W-1 completed.</i>



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	<i>Cross of D2W.2 completed.</i>
<i>17.05.2023</i>	<i>Statement of D2W4 partly recorded.</i>
<i>31.05.2023</i>	<i>Statement of D2W4 partly completed.</i>
<i>02.06.2023</i>	<i>Statement of D2W4 completed.</i> <i>20.07.23, 28.07.2023 and 03.08.2023</i> <i>fixed for further evidence.</i>

5. A perusal of the above would show that the Plaintiffs' evidence was concluded on 27th July, 2019. Defendant No.1 closed his evidence on 21st September, 2021. However, for the last so many dates, the Defendant No.2's evidence is not concluding.

6. It is observed that the Defendant No.2 has already concluded the evidence of six witnesses. There are a total of 14 witnesses on behalf of Defendant No.2. Thus, eight more witnesses are to be examined by Defendant No.2.

7. It is submitted that the Plaintiffs have incurred the costs of almost Rs.5.50 lakhs towards fees of the Local Commissioner and other expenses. It is also stated that Defendant No.2's evidence has taken more than 18 dates of hearing.

8. Considering this position and after having perused the list of witnesses filed by the Defendant No.2, it is directed that for the remaining evidence of the Defendant No.2, the costs towards the Local Commissioner's fee, secretarial arrangement and fees for venue shall be borne by the Defendant No.2.

9. Further, considering the nature of the witnesses remaining to be examined, Defendant No.2 also has the option to obtain relevant records from the concerned banks and other authorities whom they wish to summon for production of records and file certified copies of the said records.



10. Maximum of three more hearings are permitted before the Local Commissioner for completion of recording of evidence of Defendant no.2.
11. Summons shall be obtained by the Defendant No.2 for the remaining witnesses and the records shall be called for from these witnesses.
12. After the next three hearings before the Local Commissioner, the matter shall be considered before the Court if the evidence is not concluded.
13. If the evidence is concluded, the Local Commissioner shall file her final report along with the entire evidence, which is recorded.
14. Ld. Counsel for the Plaintiff also submits that vide order dated 20th May, 2022 the costs of Rs.25,000/- imposed by the ld. Division Bench, in respect of the appeal being **LPA No.340/2022** filed against the order dated 1st April, 2022, has also not been paid. Let the Defendant No.2 also comply with the said orders and pay the costs within two weeks.
15. Ld. Counsel for the Plaintiff submits that no date has been fixed before the Local Commissioner.
16. Defendant No.2 shall obtain the summons from the Registry within one week and shall serve upon the remaining witnesses.
17. List before the Local Commissioner on 7th May, 2024.
18. List on 20th August, 2024.

PRATHIBA M. SINGH, J

APRIL 22, 2024/dk/bh