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

% **Date of Decision: 16th July, 2025**

+ **CM(M) 1160/2025 & CM APPL. 39132-39133/2025**

KOTHARI SHAILESHBHAI RAMANLAL HUFPetitioner

Through: Mr. Shashank Khurana, Mr. Deepak Verma and Mr. Abheesht Sharma, Advocates

versus

SAMAKSH JAIN & ANR.Respondent

Through: Mr. Prateek Goswami, Mr. Shashank Garg, Ms. Shubhika and Ms. Manju Dahiya, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. When the present petition was taken up on 07.07.2025, the following order was passed: -

“1. The present petition has been filed by the defendant /counter-claimant.

2. Since, the concerned defendant/counter-claimant, who is residing in Ahmedabad, was stated to be an aged person and on account of his ill-health, he was not permitted to travel to Delhi, on the basis of the application moved by the defendant/counter-claimant, a Local Commissioner was appointed.

3. Reference in this regard be made to the order dated 5th April, 2025.

4. However, before the Commission could be executed, an application was moved seeking modification of said order and the petitioner wanted some reduction in fee fixed by the learned Trial Court towards said commission.

5. The fee of the Local Commissioner was Rs.75,000/-.

6. When the learned Trial Court took up the aforesaid matter on 15th May, 2025, it declined to interfere and since, the Local Commissioner also appeared before the learned Trial Court and apprised that the Commission could not be executed, keeping in mind the fact that he had to appear before the learned Trial Court with the abovesaid report, while dismissing the



abovesaid application, there was another direction to the defendant/counter-claimant to pay Local Commissioner a sum of Rs.25,000/-.

7. According to learned counsel for the petitioner, the fee was exorbitant, particularly keeping the mind the nature of the claim, both in the suit and in the counter-claim.

8. However, after hearing arguments for some time, learned counsel for the petitioner submits that he would have no objection if one opportunity is granted to them to examine the defendant/counter-claimant on the same terms and conditions as reflected in order dated 5th April, 2025.

9. He, however, also submits that the cost of Rs.25,000/- paid to the Local Commissioner be also directed to be adjusted in such fee.

10. Fact, however, remains that while dismissing the abovesaid application moved by the petitioner, the learned Trial Court has also closed his right to lead evidence in the main suit as well as in the counter-claim.

11. None appears on behalf of the plaintiff/respondent despite advance notice.

12. The case is reportedly listed for tomorrow before the learned Trial Court.

13. Issue notice to the respondent through all permissible modes including dasti. Notice be also issued to counsel.

14. List on 16th July, 2025.

15. Be shown in the Supplementary List.

16. The learned Trial Court is requested to defer the hearing to a date subsequent to the one given by this Court.”

2. Learned counsel for respondent appears, pursuant to service.

3. On the basis of query raised by the Court, learned counsel for petitioner submits that defendant has now, substantially, recovered and can travel to Delhi for the purposes of recording of his evidence. Therefore, he does not pray for execution of commission in question. He submits that if the learned Trial Court fixes up any date after three weeks from today, he would ensure that on such date, he appears before the learned Trial Court for recording of his evidence.

4. Learned counsel for the respondent submits that though the intent of the petitioner herein is to delay the proceedings, he, without prejudice to his



2025:DHC:5753



rights and contentions, would have no objection if one last and final opportunity in this regard is granted to the petitioner.

5. In view of the above, the present petition is disposed of with direction that petitioner herein would be permitted to enter into the witness box for the purposes of his examination. The impugned order dated 15.05.2025, to the above extent, is set aside and opportunity of the defendant to enter into witness box is restored. Learned Trial Court is requested to give suitable date, preferably, beyond three weeks from today so that petitioner can travel to Delhi and is in a position to make deposition before the learned Trial Court.

(MANOJ JAIN)
JUDGE

JULY 16, 2025/dr/shs