



2025:DHC:2857



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 22nd April, 2025*

+ CM(M) 721/2025 & CM APPL. 23300-23302/2025

RAMESH BRIJ LAL SANTANI

.....Petitioner

Through: Mr. Pawan Kumar Mittal, Advocate.

versus

ANITA DALMIA & ANR.

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioner filed a commercial suit seeking recovery of Rs. 23,10,277/-.
2. When the abovesaid suit was taken up by the concerned learned District Judge, Commercial Court on 28.10.2024, issues were framed and a *Court Commissioner* was appointed for recording of evidence.
3. As per said order, Ms. Deeksha, Advocate had been appointed as *Local Commissioner*.
4. Plaintiff has already examined PW-1-Roshan Lal Mittal. Plaintiff and wanted to examine Mr. Ramesh Brij Lal Santani as PW-2.His affidavit was also placed on record but since he was based in Nagpur, Plaintiff moved an application seeking his examination through *video-conferencing*, as per the applicable Rules.



5. Such request was acceded to by the learned Trial Court *vide* order dated 23.12.2024.

6. However, while passing the abovesaid order on 23.12.2024, directed by the learned District Judge, Commercial Court that one Mr. Salil Shekhar, Advocate, who had already been appointed as a Local Commissioner, would record evidence and, therefore, there was implicit direction that the further evidence of the abvoesaid witness shall be recorded by i.e. Mr. Salil Shekhar instead of Ms. Deeksha who was rather having the record as well.

7. Mr. Mittal, learned counsel for petitioner/plaintiff submits that the same plaintiff had filed another case which is also pending consideration before the same learned Commercial Court and in that other case, Mr. Salil Shekhar had been appointed as Local Commissioner. It seems that out of sheer inadvertence and oversight, the name of Mr. Salil Shekhar was mentioned in the order dated 23.12.2024 whereas the fact of the matter is that with respect to the suit in question i.e. 6CS (COMM) 292/2024, Ms. Deeksha had been appointed as Local Commissioner.

8. In order to remove the abovesaid anomaly and inadvertent ambiguity, the plaintiff moved an application on 27.03.2025 before the learned Trial Court seeking modification of the abovesaid order. However, when the matter was taken up by the learned Trial Court on 01.04.2025, the learned Trial Court noticing that despite the fact that more than five months had elapsed and extension had already been granted and evidence had yet not been concluded, the plaintiff's evidence was directed to be closed.

9. Mr. Mittal, learned counsel for petitioner/plaintiff submits that,



somehow, the abovesaid application moved by the plaintiff, whereby it had sought modification of order dated 23.12.2024, missed the attention of learned Trial Court, which has resulted in closure of his evidence.

10. He submits that once the abovesaid order was modified and the parties were required to appear before the concerned Local Commissioner i.e. Ms. Deeksha, the plaintiff would have taken the requisite steps to ensure further examination through *video conferencing* of his other witness i.e. PW-2 Mr. Ramesh Brij Lal Santani.

11. Mr. Mittal, learned counsel for petitioner/plaintiff also apprises that the next date before the learned Trial Court is 14.05.2025.

12. It seems that the plaintiff's evidence has been closed without taking into consideration the abovesaid application seeking modification and, therefore, the present petition is disposed of with direction to learned Trial Court to consider the abovesaid application dated 27.03.2025 and dispose of the same, after hearing both the parties, in accordance with law.

13. Needless to say, in case the learned Trial Court comes to the view that because of the abovesaid ambiguity, the plaintiff was not in a position to get PW-2 Mr. Ramesh Brij Lal Santani examined, it would be at liberty to pass further appropriate order in this regard.

14. Learned counsel for the petitioner, at the moment, does not seek for any further relief. He, however, submits that in case, his such application is dismissed and the petitioner/plaintiff is denied opportunity of examining PW-2 Mr. Ramesh Brij Lal Santani, he may be permitted to file petition



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afresh.

15. Such liberty is granted to him.
16. Petition is also disposed of in aforesaid terms.
17. The pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 22, 2025/sw/JS