



2025:DHC:927



\$~

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

% *Date of Decision: 11th February 2025*

+ CM(M) 278/2025

YOGESH PARNAMI (HUF)

.....Petitioner

versus

SK MITTAL

.....Respondent

Through:

Advocates who appeared in this case:

For the Petitioner:

Mr. Harshit Jain, Mr. Rahul Kumar
and Mr. Shubham Jain, Advocates.

For the Respondent:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (O R A L)

RAVINDER DUDEJA, J.

CM APPL. 8178/2025 (exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 278/2025 & CM APPL. 8177/2025 (stay)

1. The petition filed under Article 227 of the Constitution of India impugns the order dated 17.12.2024, passed by the learned District Judge (Commercial Court)N-02, North-West District, Rohini Courts, Delhi in Civil Suit (Commercial) bearing CS DJ No. 638/2023, titled “*Yogesh Parnami (HUF) Vs. S.K. Mittal*”.



2025:DHC:927



2. The brief facts are that petitioner filed a Suit for Recovery of Rs. 6,80,000/- with pendent lite and future interest at the rate of 12% per annum till its realization.
3. Respondent was proceeded ex-parte vide order dated 26.10.2024.
4. On 17.12.2024 without request from the petitioner, the learned trial court *suo moto*, appointed a Local Commissioner for recording of evidence of the petitioner. The fee of the Local Commissioner was fixed as Rs. 5000/- per witness. Further fee of Rs. 1000/- per day was fixed for the Stenographer/Typist, in addition to, Rs. 500/- diet money for the Ahlmad/Nazir/Reader of the court for production of the record.
5. Vide order dated 10.01.2025, taking note of the fact that due to default on the part of the petitioner, evidence could not be recorded before the Local Commissioner, cost of Rs. 5000/- was imposed upon the petitioner for being paid to the Local Commissioner.
6. Learned counsel for the petitioner submits that petitioner never made any request to the trial court for appointing a Local Commissioner and that trial court at its own appointed the Local Commissioner. It is further submitted that petitioner is to examine only 3-5 witnesses. The respondent being ex-parte, it would not have taken much time of the court for examination of the said witnesses. It is further submitted that recording of evidence through Local Commissioner shall impose additional financial burden on the petitioner. In support of his submissions, learned counsel places reliance on the decision of the Single Judge of this Court in M/s. **H.**



2025:DHC:927



Dohil Constructions Co. (P) Ltd. Vs. Rohit Lal & Ors. 2014 SCC OnLine Del 4037.

7. I have carefully gone through the afore-cited judgment. In the cited case, learned trial court had appointed a Local Commissioner for the purpose of recording of evidence. In the said case while considering the challenge to the appointment of the Local Commissioner for the purpose of recording of the evidence, the learned Single Judge in Para No. 4 & 5 of the judgment observed as under:-

“4. This Court is conscious that during cross examination and re-examination, the demeanour of the witness is required to be appreciated and assessed. While the recording of evidence (cross-examination and re-examination) of the witness in attendance whose evidence (examination-in-chief) by affidavit has been furnished to the Court, is permissible by a Local Commissioner, the Court would not as a matter of routine deny itself the essential aspect of appreciation and assessment of the demeanour of the witnesses during such examination. It would weaken the adjudicatory process. The essential processes and moments which contribute to the formation of adjudicatory opinion cannot always be delegated to a Local Commissioner. A mere ministerial recording of evidence could well be the objective for permitting recording of evidence through Local Commissioner, provided such appointment is occasioned and warranted in the select circumstances contemplated in the statute. However, the Courts would be cautious in delegating such essential aspects of the trial to a Local Commissioner which extends to the formation of a view, opinion, expression or appreciation of evidence or the demeanour of witness which would form the very basis of the adjudication. The Courts would justifiably and robustly retain such aspects of the trial exclusively for themselves, so that recording of evidence by Local Commissioners is not resorted to as a matter of routine.

5. This Court is of the view that where both the parties wanted the evidence to be recorded in the presence of the learned Judge in the court, and furthermore, there was an objection to the imposition of financial burden on the parties, the Trial Court ought to have



2025:DHC:927



reviewed and indeed recalled its order of appointment of the Local Commissioner. Where parties object to the imposition of a financial burden on the appointment of a Local Commissioner, albeit for the purpose of lending expedition to the disposal of a pending litigation, the Court ought to be cautious in casting such financial burden on them. Faith in the judicial adjudicatory process is affirmed and enhanced when litigants observe the conclusion of proceedings in the Court and return with impression that a fair and equitable procedure as known to law, had been adopted. There can be no better “fair process” than the proceedings conducted in the open Court. It cannot be read as the objective of the legislation to impose costs on unwilling or economically incapable parties for the appointment of Local Commissioners, howsoever small or large that cost may be, if the parties so object. The legal process would not condone a methodology which tends to weaken either the representation or the case of a party before a court of law because of comparative financial weakness. Imposition of a monetary burden can be cast upon a person only by sanction of law and not by the Trial Court where the litigants raise an objection to the alternative procedure adopted. Although, the Trial Court's concern apropos pendency of cases and the reasoning for expeditious disposal of the case cannot be faulted and the disposition of counsel, in certain circumstances, may well be deemed obstructive, but the order itself resulting in the appointment of the Local Commissioner and the cost imposed would be unjustified when there is opposition to such appointment or is otherwise deemed unwarranted. Any procedure adopted by the lower courts which tends to weaken the faith of the public in the judicial adjudicatory mechanism as per legally defined procedure, would be susceptible to the High Courts' intervention in its supervisory and revisionary jurisdiction.”

8. While dealing with such challenge, the learned Single Judge also referred to the decision of the Andhra Pradesh High Court in the case of **T. Srinivasa Rao Vs. T. Venkata Rangaiah, AIR 2007 AP 1**, wherein inter alia, it has been held as under:-

“6. Time and again this Court cautioned the trial Courts, not to appoint Commissioners for recording cross-examination of witness, as a matter of course. The effect of permitting the witnesses to file affidavits in lieu of chief-examination, resulting in denial of opportunity of the Courts, to appreciate and assess the



2025:DHC:927



demeanour of witnesses; was pointed. In fact, amendment of Order 18 Rule 4 C.P.C., to the effect that the only mode of chief-examination shall be through filing of affidavits, had its own implications, on the adjudication of the suit, notwithstanding the time it had saved, for the Courts in the process. Be that as it may, the Parliament did not intend appointment of Commissioners for recording of cross-examination, as a matter of course. The question as to whether recourse should be had to, such a measure; would depend upon the pressure of work in the Court, the condition of witness, i.e. the difficulty for him to appear before the Court, the nature of questions that may crop up during cross-examination, such as, the occasion to overrule to sustain any objections, determination as to the admissibility and relevancy of documents, etc

7. Appointment of Commissioners to record the cross-examination of an otherwise able witness, is prone to weaken the very adjudicatory process, and it would naturally tell upon the quality of adjudication. The tendency, which would encourage the Courts, to avoid one after the other facets of adjudication, is likely to increase. The logical extension of such a course would be, to search for devices, excuses, or shortcuts, for disposal of the suits, without actually examining the issues, appreciating the evidence or undertaking discussion. Each and every step in the adjudicatory process has its own impact on the ultimate outcome. It must not be forgotten that adjudication by Courts is respected, on account of various stages involved in it, and with the deletion of one or more of such steps, the credibility of the entire system would receive a dent.”

9. No doubt, as per Order 15-A Rule 6 (o) & (p), the Court has the power to appoint Local Commissioner for the purpose of recording of evidence. However, such power must be exercised in a judicious manner in appropriate cases and not as a matter of course. In the present case, as may be seen, respondent is already ex-parte. Since respondent has not been appearing and is ex-parte, there is hardly any scope for cross examination of witnesses, and therefore, much time of the court would not have been consumed in recording of the evidence



2025:DHC:927



by the court itself. The evidence in such circumstances should have been recorded before the Court and the petitioner should not have been put to extra financial burden of payment of the fee of Local Commissioner. The case would have been different if petitioner himself had made such a request for examination of his witnesses through alternative mode i.e. through Local Commissioner. But such is not the case here.

10. For the aforesaid reasons, this Court is of the view that the impugned order suffers from material irregularity. Petition is therefore allowed and the impugned order dated 17.12.2024 and the order dated 10.01.2025 are accordingly set aside with direction that the evidence of the petitioner's witnesses be recorded in court and not through Local Commissioner.

RAVINDER DUDEJA, J.

February 11, 2025

RM