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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TEST.CAS. 65/2010**

VINAY KHANNA

..... Petitioner

Through: Ms. Kajal Chandra, Advocate with
petitioner in person.

versus

STATE & ORS

..... Respondents

Through: Mr. Arshhid Bashir, Advocate for R-2
& 4.

Mr. Sandeep P. Aggarwal, Sr.
Advocate with Mr. Rajesh Pathak &
Ms. Tanya Chanda, Advocates for
R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **22.04.2024**

I.A. 8564/2024 (u/S 151 of CPC, 1908)

1. By way of present application, the applicant/petitioner seeks permission to record the evidence of the attesting witness, either physically or through video conferencing as well as the other witnesses before the Joint Registrar.
2. It is submitted in the application that the petitioner filed the Application No. I.A. 5441/2024 for partial recall of the Order dated 29.11.2023 thereby seeking the relief that the recording of the testimony of the petitioner be done before the Joint Registrar instead of Local Commissioner.
3. It is submitted that the attesting witness/Shri Raghubir Chand Mehra, brother of the Testator, is a vital witness to prove the Will.
4. It is further submitted that the applicant/petitioner apprehends that



attesting witness/Shri Raghubir Chand Mehra is under the influence of the respondent No. 3 and is in contact with him regularly and this may prejudice his case which is pending adjudication.

5. The applicant/petitioner has further apprehension that if the evidence of the attesting witness/Shri Raghubir Chand Mehra is recorded before the Local Commissioner, he may not be able to overrule any objection to a question put to the witness, whereas the atmosphere in the Court generally acts as a deterrent against the witness deposing falsely and the demeanour of the witness can be watched and scrutinised by the Judge, in a better way.

6. Moreover, the fee of the Local Commissioner is not affordable to the petitioner as he has no continuous source of income. Therefore, the prayer is made that the evidence of the attesting witness/Shri Raghubir Chand Mehra, as well as, of the other witnesses, either physically or through video conferencing be recorded before the Joint Registrar of this Court instead of the learned Local Commissioner.

7. **Submissions heard.**

8. Pertinently, the issues were framed on 29.11.2023 and the respondent No. 3 *vide* I.A. 11818/2022 under Order XXVI Rules 2 and 4 read with Section 151 of the Code of Civil Procedure, 1908 seeking appointment of the Local Commissioner for recording of evidence of the attesting witness/Shri Raghubir Chand Mehra who is aged about 88 years and the resident of Amritsar, Punjab at the earliest.

9. Learned counsel for the respondent No. 3 had also no objection to the recording of entire evidence through the Local Commissioner. Learned counsel for the petitioner had also no objection if the entire evidence was recorded through a Local Commissioner.



10. Accordingly, the Local Commissioner was appointed for recording of the evidence. Furthermore, on the same date, on the request of the respondents, it was further directed that the evidence of the attesting witness/Shri Raghubir Chand Mehra may be recorded by the Local Commissioner at his residence at Amritsar, Punjab. The additional fee was fixed for recording of evidence of the attesting witness/Shri Raghubir Chand Mehra by the Local Commissioner at Amritsar.

9. Pursuant to the Order dated 29.11.2023, the Local Commissioner commenced the recording of evidence.

10. On 14.12.2023, the Local Commissioner was informed that the attesting witness/Shri Raghubir Chand Mehra would be in Delhi from 19.01.2024 and accordingly, the date i.e., 21.01.2024 was fixed by the Local Commissioner for recording of evidence. However, on 25.01.2024, the respondent No. 3 submitted the Letter dated 25.01.2024 of attesting witness/Shri Raghubir Chand Mehra stating that he is unable to come Delhi because of his illness and requested that his evidence be recorded at Amritsar, Punjab.

11. The Local Commissioner accordingly fixed the dates of 06.03.2024 and 07.03.2024 for recording of evidence of the attesting witness/Shri Raghubir Chand Mehra at Amritsar, Punjab.

12. The applicant/petitioner thus, moved the Application No. I.A. 5441/2024 stating that he was apprehending that the attesting witness/Shri Raghubir Chand Mehra may be under the influence of the respondent No. 3 and thus, the prayer was made that in this unprecedented situation and considering that the Local Commissioner does not have the powers as enjoyed by the Court, the Order dated 29.11.2023 may be recalled.



13. The said Application No. I.A. 5441/2024 was disposed of *vide* Order dated 07.03.2024 and the Order dated 29.11.2023 was partly recalled directing that the recording of evidence of the attesting witness/Shri Raghubir Chand Mehra at Amritsar, Punjab was modified and considering the restricted mobility of attesting witness/Shri Raghubir Chand Mehra on account of his ailments as well as his old age, it was directed that he may appear for recording of his evidence through video conferencing and the Local Commissioner may do the recording of evidence from the premises of this Court.

14. However, now again, the present application has been filed on behalf of the applicant/petitioner seeking direction that the evidence may be recorded by the Joint Registrar and not by the Local Commissioner.

15. The only apprehension of the petitioner is that the attesting witness/Shri Raghubir Chand Mehra may have been won over by the respondent No. 3 and may not depose about the true facts because of the influence of the respondent No. 3.

16. The ground agitated by the applicant/petitioner for the modification of the previous Orders is completely bereft of any merit. If the attesting witness/Shri Raghubir Chand Mehra is allegedly under the influence of the respondent No. 3, his testimony would continue to be the same, whether it is recorded through video conferencing or physically and whether by the Local Commissioner or by the Court. The procedure for recording of evidence through video conferencing has been devised essentially to address such situations where the witnesses who are unable to travel long distances, and requirement to appear in the Court as a witness is alleviated and the evidence of such witnesses can be recorded without inordinate delay.



17. The applicant/petitioner had agreed to the recording of the evidence through video conferencing and has already appeared before the Local Commissioner on various dates. The reason seeking appearance of witness in the Court itself is misplaced apprehension as the petitioner has apparently overlooked the purpose of cross-examination by the opposite party is to bring out the truth.

18. Furthermore, the applicant/petitioner has submitted that there is another attesting witness to the Will who may also be examined by the applicant/petitioner in support of his averments in the petition.

19. Now, the applicant/petitioner has been changing his stand on every date and is coming with some reason for stalling of the recording of evidence of attesting witness/Shri Raghubir Chand Mehra on one pretext or the other despite being aware and mindful that attesting witness/Shri Raghubir Chand Mehra is aged about 80 years and is suffering from old-age ailments and any inordinate delay can cause the loss of most relevant or material evidence. And by way of such applications, the applicant/petitioner intends to somehow prevent the recording of the attesting witness/Shri Raghubir Chand Mehra.

20. In view of above, there is no merit in the present application which is hereby dismissed.

21. The parties are directed to remain available for the recording of their evidence before the Local Commissioner on the date, already fixed.

TEST.CAS. 65/2010 & I.As. 3139/2022, 3140/2022, 11818/2022, 12210/2022, 14513/2022, 14514/2022, 15210/2022, 18576/2023, 18577/2023, 21355/2023, 4336/2024, 5441/2024



22. List before the Joint Registrar on 25.04.2024, the date already fixed.

NEENA BANSAL KRISHNA, J

APRIL 22, 2024/s.Sharma