

\$~21

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

+ CM(M) 615/2022

NIKHIL GUPTA

..... Petitioner

Through: Mr. Anuj Jain, adv.

versus

TANU GUPTA

..... Respondent

Through: None.

%

Date of Decision: 5th July, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

The present petition has been filed challenging the order dated 2nd May, 2022 whereby the learned Trial Court has rejected the request of the petitioner for appointment of Local Commissioner.

The perusal of impugned order of Trial Court indicates that the learned counsel for the respondent had raised strong objection for evidence being recorded through Local Commissioner. Learned Trial Court noted the contention of the learned counsel for the respondent that the cross examination of PW-1 has already been commenced and that he is ready to cross examine PW-1 as and when she is available. It was also noted that the respondent is not willing to bear 50% of the fee of the Local Commissioner. In the order, the learned Trial Court *inter alia* held as under:

“The petitioner, who is present in the court, is a hale and hearty person and is not incapacitated in any manner, physically or mentally, nor is there any other reason as to why evidence should not be recorded in the court. Local Commissioners are appointed for recording of evidence in extreme exigencies but this cannot be made the norms of the day. In divorce matters, stakes are so high that a ‘word’ here or there, changes the whole scenario. Just because there is a huge pendency of cases in the court, all the matters cannot be sent for recording of evidence through Local Commissioner.”

It is also pertinent to mention here that the learned Trial Court also advised the parties to ensure that as and when the matter is listed for evidence, they be present in the Court on time so that the cross examination can be commenced in the early hours in the pre-lunch session.

Learned counsel for the petitioner states that in case Local Commissioner is not appointed, it may take 10 years for disposal of the petition. He further submitted that there is no justified ground for the respondent for not agreeing to appoint the Local Commissioner.

Learned counsel for the petitioner has assailed the order of the learned Trial Court on the ground that the impugned order has been passed merely on the whims and fancies. It has been submitted that the request of appointment of Local Commissioner has been rejected without any basis.

Learned counsel has further submitted that the petitioner is ready to bear the entire fee cost of the Local Commissioner. The reliance has also been placed upon *Savita Devi v. Lalit Kumar* CM (M) 1203/2018.

I have considered the submissions. At the outset, it is necessary to refer that the scope of jurisdiction to be exercised by this Court while entertaining revision is very limited. The High Court can interfere into the order of the learned Trial Court in the revisional jurisdiction only on the following grounds:

- a. The Trial Court has exercised jurisdiction not vested in it by law;
- b. The Trial Court has failed to exercise a jurisdiction so vested; or
- c. The Trial Court has acted in the exercise of its jurisdiction illegally or with material irregularity.

The power to appoint the Local Commissioner is conferred under Order XVIII Rule 19 which reads as under:

“Power to get statements recorded on commission. Notwithstanding anything contained in these rules, the court may, instead of examining the witnesses in open court, direct their statements to be recorded on commission under Rule 4A of Order XXVI”

Order XXVI Rule 4A reads as under:

“4A. Commission for examination of any person resident within the local limits of the jurisdiction of the court.- Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any Suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.”

It is also pertinent to mention that the court may issue commission for recording evidence of :

- Any person resident beyond the local limits of the jurisdiction;
- Any person who is about to leave such limits before the date of which he has to be examined in Court; and
- Any person who is in the service of Government cannot attend without detriment to the public service .

Thus, the bare perusal of law makes it clear that the discretion to appoint Local Commissioner may be exercised only in the cases as enumerated under the law. It is pertinent to mention here that in view of the pendency of matters in the courts, the practice of appointing local commissioner for recording of evidence is being encouraged for the expeditious disposal of the matters. However, the trial Courts while issuing the commission has to take into account, the peculiar facts and circumstances of the case.

The Trial Court is the best judge to decide on these issues as the trial is being conducted there. This Court in exercise of its revisional power cannot be seen as controlling the day to day affairs of the Trial Court. If, there is consent of the parties then of course, the courts are more inclined to issue the commission. However, if one of the parties is not agreeable then, the courts have to see the attendant facts and circumstances of the case. In such a case, if both the parties are not agreeable, the general experience is that the Local Commissioner faces lots of difficulties in recording of evidences.

Learned judge in the present case has taken into account the peculiar facts of this case.

In view of these, I do not find any ground to interfere in the impugned order. Accordingly, the present petition is dismissed.

DINESH KUMAR SHARMA, J

JULY 5, 2022

Pallavi

HIGH COURT OF DELHI



सत्यमेव जयते