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

+ **CM(M) 766/2016**

RAMESH CHANDER Petitioner
Through Mr. Manu Nayar, Ms.Nisha Rawat
and Ms.Meenakshi Bhatia, Advocates.

versus

SATISH KUMAR ARORA & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
10.08.2016

CM No. 28983-28984/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 766/2016 and CM No. 28982/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 26.05.2016 by which the trial court dismissed of the application of the petitioner/defendant No. 1 under Section 151 CPC seeking recording of evidence before the Joint Registrar/concerned court rather than before the Local Commissioner. The trial court vide the said order noted that on the request of the petitioner, the High Court on 24.11.2014 had directed that Sh. Padam Kumar Saxena be appointed as a Court Commissioner/Local Commissioner to record evidence of parties. His fee was fixed at Rs.75,00/- plus out of pocket expenses. It was also directed that the fee of the Local

Commissioner would be borne by defendant No.1 in the first instance and would be subject to final outcome of the suit. The trial court however did not accept the contention of the petitioner that he is an old aged person having poor financial condition and hence, cannot afford the expense of recording of evidence by the Local Commissioner. The application was accordingly dismissed.

2. A perusal of the order of this court dated 24.11.2014 shows that the Court Commissioner has been appointed at a fixed fee of Rs.75,000/-. It was posed to the learned counsel for the petitioner as to whether any order has been passed by the trial court enhancing the fee in as much as the full fees stands paid to the Local Commissioner of Rs.75,000/-, as directed. Learned counsel stated that no such order has been passed. However, he apprehends that such an order is likely to be passed. At present there are no major additional expenses involved to warrant modification of order dated 24.11.2014.

3. However, if any request is made by the Court Commissioner for enhancement of the fee, at that stage the petitioner would be free to make his submissions regarding the financial condition of the petitioner and his inability to pay additional fees.

4. With these observations, the present petition stands disposed of.

JAYANT NATH, J

AUGUST 10, 2016
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