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

+ CM(M) 63/2017 and CM Nos. 2047-48/2017

SHYAMA BHARGAVA Petitioner
Through Mr. Sunil Goyal and Mr. Deepak,
Advocates.
versus
UMESH KUMAR BHARGAVA & ORS..... Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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18.01.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 24.02.2016 by which the trial court had directed that the fees of the Local Commissioner who is recording evidence would be borne by the parties whose witness is being examined on the date fixed. The plaintiffs, namely, respondents No. 1 and 2 filed the suit for possession, damages and mesne profits claiming that they have purchased the property B-5/138, Safdarjung Enclave, New Delhi by a registered sale deed.

2. By the impugned order, a request was noted of the counsel for the petitioner that the petitioner is a resident of USA and she would be arriving in India on 11.01.2017 and hence, the time for filing the affidavit by way of evidence be extended till 13.01.2017. The application was opposed by the counsel for respondents No. 1 and 2 pointing out that the order appointing the Local Commissioner to record the evidence was made on 23.10.2013. It was further submitted that on 21.12.2015, the court had directed the Local

Commissioner to complete the recording of evidence within a period of six months. He further submitted that 20 dates have already been fixed before the Local Commissioner but the evidence has not yet been completed. He submits that he has paid a fee of Rs. 60,000/- and also out of pocket expenses around Rs.75,000/-. Accordingly, in view of the above, the trial court directed that an opportunity be given to the petitioner to file her affidavit as prayed in the application. However, the trial court clarified that the fee of the Local Commission recording evidence would be 15,000/- per day in addition to diet money which would be borne by the parties for examination of whose witness the date is fixed. Other miscellaneous expenses like typing expenses, etc. were also to be borne by the parties. It was further clarified that if any party seeks an adjournment, the cost of adjourned date of hearing would be borne by the said party.

3. The petitioner by the present petition seeks to challenge the said order by which the cost has been burdened on the party whose evidence is to be examined.

4. The dispute pertains to a property in a posh South Delhi area. The petitioner is residing in USA. It is not clear why the present petition is filed. The order has been passed in the interest of justice keeping in mind the conduct of the parties whereby 20 hearings have taken place despite that evidence has not been completed. There is no merit in the present petition and the same is dismissed with cost of Rs.5,000/- to be deposited with DLSA.

5. All pending applications also stand dismissed.

JANUARY 18, 2017/rb

JAYANT NATH, J