

\$~1

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

+ **FAO(OS) 241/2017**

M/S JSK HOTELS PVT LTD Appellant
Through: **Mr. Rajesh Agrawal, Adv.**

versus

RAMESH SHARMA & ANR Respondent
Through: **Ms. Namita Mathews with**
Ms. Poorva Pant, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **16.11.2017**

1. The appellant before us assailed the order dated 24th May, 2017 passed by the learned Single Judge whereby I.A. No.10100/2016, filed by the appellants herein (defendants in CS(OS) No.1101/2010, for examining the three witnesses in support of the defence, was rejected.

2. The application appears to have been filed while the first defence was still in witness box. The impugned order dated 24th May, 2017 has been primarily rejected for the fact that the defendants have not given sufficient reasons for examination of the witnesses and also not given reasons as to why the application was filed at that stage.

3. Learned counsel for the respondent (plaintiff in the suit) submits that she has taken instructions to inform this Court that in

case this Court issues time bound directions for completion of the evidence of the appellants/defendants and subject to payment of costs, the respondent would not object to the grant of prayer made by the appellants by way of I.A. No.10100/2016 in CS(OS) No.1101/2010.

4. We are informed by the parties that by an order dated 4th December, 2015, the evidence in the suit was being recorded before Sh. Harpreet Singh, Advocate (Local Commissioner) who was paid Rs.2,00,000/- as fee. We are also informed that three witnesses on behalf of the plaintiff and one witness on behalf of the defendant stand examined. Therefore, substantial amount has already been paid as fees by an order dated 4th December, 2015 to the Local Commissioner.

5. We are of the view that the stand taken by the respondent is fair.

6. In view thereof, it is directed that the orders dated 24th May, 2017 rejecting I.A. No.10100/2016 is hereby set aside and the appeal is hereby allowed, subject to the payment of Rs.25000/- as costs which shall be paid within two weeks from today.

7. We are informed by the learned counsel for the appellant that the Examination-in-Chief of three additional witnesses by way of affidavits is ready and would be got attested, which would be positively filed within two weeks from today. The same shall be so filed positively.

List on 6th December, 2017 before the Local Commissioner for fixing the date for recording the evidence of the remaining evidence of the parties.

8. The appellants shall ensure that no adjournment shall be taken for completion of the evidence.

9. We make it clear that in case the respondent/plaintiff requires, it would be open for it to lead rebuttal evidence.

10. It shall be open to the learned Single Judge to order additional fees for the Local Commissioner, if so deemed appropriate, after its conclusion.

11. This appeal is allowed in the above terms.

Dasti to the parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 16, 2017/pmc