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

+ MAT.APP.(F.C.) 144/2017 and CM APPL. 28827-28/2017

SAPNA JULEE

..... Appellant

Through: Mr. Sunil Mittal, Senior Advocate with
Mr. V.P.S. Charak and Ms. Shubhra Parashar,
Advocates

versus

DR SUMIT PRASAD

..... Respondent

Through: Mr. Aggarwal, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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11.08.2017

1. The appellant/wife is aggrieved by the order dated 27.07.2017 passed by the Family Court, allowing an application filed by the respondent/husband for appointment of a Local Commissioner to record the evidence of the parties. Under the impugned order, Shri S.C. Malik (Retired ADJ) has been appointed as a Local Commissioner to record the evidence of the parties for which his fee and the out of pocket expenses have been directed to be paid by the respondent/husband. The Local Commissioner has been directed to record the evidence on a day-to-day basis, within the court premises commencing from 08.08.2017 at 12 noon. Further, it has been directed that in case an adjournment is given in an extreme circumstance, after the conclusion of the cross-examination of the respondent, then the fee

for the said date would be borne by the appellant.

2. Mr. Mittal, learned Senior Advocate appearing for the appellant/wife states that the aforesaid order is causing great hardship to the appellant and her counsel as the learned Local Commissioner has been recording the evidence on a day-to-day basis effective from 08.08.2017, from 12 PM to beyond 6 PM, thus causing great inconvenience to the counsels, who have other cases to attend to, but are having to leave all work to remain present for the conclusion of the cross-examination of the respondent (PW-1). We are informed that the Local Commissioner has recorded the evidence for three running dates and the matter is listed before him today at 12 Noon, for further cross-examination of the respondent.

3. Mr. Aggarwal, learned counsel for the respondent/husband contends that the appellant is deliberately dragging her feet and all kinds of irrelevant questions are being put to the respondent during his cross-examination only to delay the proceedings. He particularly refers to the cross-examination of the respondent (PW-1), as recorded on 10.08.2017, where three pages relate only to one photograph of the marriage ceremony of the parties. He states that 117 photographs of the marriage ceremonies of the parties have been filed by the respondent and having regard to the fact that the marriage itself is not in dispute, the said questions are solely to delay conclusion of the evidence. He further states that the respondent is working in Nairobi and has taken leave for three days to come to Delhi for his cross-examination and if the same is conducted at this pace, it will never conclude. We are informed that as against the respondent's list of witnesses, wherein 3

witnesses have been cited, on her part, the appellant has cited 66 witnesses in her list of witnesses, which clearly reflects an attempt to somehow drag the proceedings before the learned Family Court.

4. The aforesaid submissions are vehemently disputed by learned counsel for the appellant, who denied that any attempt is being made by the appellant to delay conclusion of the evidence before the learned Local Commissioner. He assures us that though 66 witnesses have been cited by the appellant, the said list shall be pruned to about 10 witnesses.

5. Having gone through the evidence recorded before the Local Commissioner and looking at the nature of the questions posed to the respondent in his cross-examination, we deem it appropriate to grant permission to the Local Commissioner to disallow all irrelevant questions. To avoid confusion and crowding, parties shall ensure that only two counsels appear for them before the Local Commissioner for the purpose of recording the evidence. In the event, the Local Commissioner notices that either of the parties is attempting to record the evidence on their mobile phones or any other electronic device as alleged before us, he shall be entitled to confiscate the instrument in question and retain it with him till the evidence is concluded for the day.

6. After the cross-examination of the respondent (PW-1) is concluded, the Local Commissioner is requested to record the remaining evidence on a day-to-day basis, from 2 PM to 6 PM. In the event, either of the parties find it inconvenient to appear on a daily basis before the Local Commissioner for

conclusion of the evidence in the case, they are at liberty to approach the learned Family Court for seeking modification of the impugned order, limited to the above aspect.

7. The appeal is disposed of alongwith the pending applications.

DASTI to the counsels for the parties under the signatures of the Court Master.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 11, 2017

rkb/pv