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

+ CM(M) No.956/2017 & CM No.32178/2017 (for stay).

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..... Petitioner

Through: Ms. Indira Jaising, Sr. Advs. with Ms.
Rebecca John, Sr. Adv. with Ms.
Khushdeep Gaur, Ms. Ajita Sharma
and Mr. Rohit Ghosh, Advs.

versus

DR R.K PACHAURI & ORS

..... Respondents

Through: Mr. Ashish Dixit, Adv. for R-1.
Mr. Rohan Malik, Adv. for R-2.
Mr. Sarojanand Jha and Mr. Biswajit
Choudhury, Advs. for R-3.
Ms. Mayuri Raghuvanshi and Mr.
Vyom Raghuvanshi, Advs. for R-4.
Mr. Sanjeev Sindhvani, Sr. Adv. with
Mr. Harsh Bora and Ms. Nicy
Paulson, Advs. for R-5.
Ms. Monika Arora, CGSC with Mr.
Harsh Ahuja, Adv. for R-6 / UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.09.2017**

CM No.32179/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.956/2017 & CM No.32178/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order dated 24th August, 2017 as under:-

“Plaintiff filed reply to the application under Section 151 of CPC dated 11.07.2017 moved on behalf of Defendant No.4. Copy supplied. Ld. Counsel for defendant No.4 submits that

since today he has received the copy, therefore he seeks time for arguments on the said application.

Ld. Counsel for Defendant No.5 submits that she has received copy of the applications of the plaintiff yesterday by the plaintiff. She seeks time to file reply to the said applications.

Ld. Counsel for the plaintiff submits that he is ready to supply copy of the application to other parties.

Prima facie this Court is of the opinion that whichever question is being asked during cross-examination before the Ld. Local Commissioner unless and until it is clarified that the question is being asked during cross examination upon the instructions of the litigant, in those circumstances litigant as well as counsel, both shall be responsible though applications shall be heard on the next date and shall be disposed accordingly.

In application moved on 21.8.2017 all averments have been made in respect of defendant No.5, therefore, defendant No.5 shall file reply to such application.

After hearing the parties this Court again directs that whatever question is being asked during cross-examination before the Ld. Local Commissioner, the Local Commissioner shall record the evidence. In case there is any objection, the evidence should not be stopped but objection shall be recorded and the evidence shall be continued. During cross-examination if question is being asked by a particular Defendant or a particular party to a witness, then only that Defendant or the plaintiff can raise objection during that time. At its own turn the concerned Defendant/the concerned party is at liberty to raise objection.”

in CS No.57510/16 of the Court of Additional District Judge-01, Patiala House Courts, New Delhi. The said suit has been filed by the respondent no.1 / plaintiff against the petitioner and the respondents no.2 to 5 for recovery of compensation / damages for defamation and for injunction

and evidence is being recorded therein and the suit is at the stage of cross-examination by the counsel for the petitioner of the respondent no.1 / plaintiff.

4. The first grievance of the senior counsel for the petitioner is, with respect to the part of the order making the petitioner and the counsel for the petitioner who is cross-examining the respondent no.1 / plaintiff responsible. It is contended that the said observation is contrary to Sections 126, 151 and 152 of the Indian Evidence Act, 1872.

5. I have enquired from the counsel for the respondent no.1 / plaintiff appearing on advance notice as to how the petitioner or the counsel for the petitioner who is cross-examining, can be made responsible as has been done and if at all the respondent no.1 / plaintiff at any subsequent stage institutes any proceedings and in which a claim is also made against the petitioner as well as the counsel for the petitioner owing to the questions put in cross-examination in the subject suit, it has to be decided in that suit whether such a claim lies or not.

6. The counsel for the respondent no.1 / plaintiff states that the respondent no.1 / plaintiff has been further defamed during the cross-examination and would be taking proceedings with respect thereto.

7. As and when the said proceedings are taken, all questions would remain open therein and at this stage an observation, particularly making the counsel and the petitioner responsible, cannot be sustained and amounts to pre-judging the issue which may arise in a proceeding which has not even been instituted till now. It is further felt that such observation interferes with the petitioner fearlessly defending the subject suit and her counsel fearlessly

acting on behalf of the petitioner.

8. Thus the part aforesaid of the order is expunged.

9. The other contention of the senior counsel for the petitioner is that the right to object has been restricted to the cross-examining counsel only and has been taken away from the counsels for the other defendants present during the cross-examination. On enquiry, as to the situation in which such an issue may arise, it is contended that the respondent no.1 / plaintiff during his cross-examination has been producing additional documents and to which objection is taken not only by the counsel for the petitioner / defendant but also by the counsels for the other defendants present.

10. The counsel for the respondent no.1 / plaintiff states that the respondent no.1 / plaintiff will now not be filing any other document and thus the said question will not arise.

11. If in any other situation, the said question arises, then, objection can be raised by the other counsels also and the part of the order restricting the right to object only to respondent no.1 / plaintiff and / or the cross-examining party is also expunged. The objections so recorded, of course shall be subject to final adjudication.

11. At this stage, the counsel for the respondent no.1 / plaintiff has pointed out that the time limited vide order dated 12th July, 2017 in CM(M) No.696/2017 and CM(M) No.697/2017 arising from the same suit, for recording evidence of respondent no.1 / plaintiff and his two witnesses is expiring on 30th September, 2017.

12. All counsels agree that the way the cross-examination is proceeding, it is unlikely to conclude by 30th September, 2017.

13. The said time is extended till 31st December, 2017.

The petition is disposed of.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 04, 2017

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