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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1575/2018 & CM APPL. 53371/18
SSANGYONG CORPORATION Petitioner
Through Mr. Purushottam Kumar Jha, Adv.

versus

EMMANUEL INTERNATIONAL INC Respondent
Through Mr. Manoj V. George, Ms. Shilpa
Liza George, Mr. Amit Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **08.01.2019**

The petitioner vide the present petition had assailed the impugned order dated 01.11.2018 of the Court of the learned ADJ-01 (South East), Saket Courts, New Delhi in CS – 10896/16 vide which order *inter alia* the plaintiff was granted one opportunity to tender his documents subject to law of evidence with costs of Rs.5,000/- having been imposed on the plaintiff i.e. the respondent herein to be paid to the petitioner i.e. the defendant and the remaining costs of Rs.5,000/- to be deposited in the DLSA South East qua which it has been submitted on behalf of the respondent to the present petition as also on behalf of the petitioner that the costs of Rs.5,000/- have been deposited in the DLSA South East but that the costs of Rs.5,000/- though tendered to be paid to the defendant i.e. the petitioner of the present case were not accepted by the petitioner.

Vide the said impugned order, it was also observed to the effect : -

“At this stage, I have asked the parties if they are ready and willing to get evidence recorded before Court Commissioner.

Counsel for plaintiff has submitted that they have no objection to recording of plaintiff evidence before the Court Commissioner and will pay the expenses of Local Commissioner.

In view of the same, Sh. Des Raj Markan, Advocate, 6B Panchsheel Enclave, New Delhi, having mobile no. 9205096517 is appointed as Court Commissioner for recording plaintiff evidence.

Accordingly, Ld. Court Commissioner is directed that plaintiff evidence shall be recorded from 26.11.2018 from 3 PM to 5 PM in the room allocated for Court Commissioner in the Court building. Witnesses shall remain present on that day. Parties are directed to carry the original documents on the day of evidence.

A remuneration of Rs.5,000/- shall be paid by plaintiff to the Court Commissioner for sitting of two hours.

The examination- shall be recorded by Ld. Commissioner typographically with due pagination. The party leading the evidence shall assist the Court Commissioner appropriately by bringing the electronic device as well as typist for recording of evidence. In case of any miscellaneous expenses, same shall also be borne by the plaintiff. Only one set of print out of recorded evidence shall be taken out from the Court printer by the Ahlmad in presence of Court Commissioner. Thereafter, photocopies of the evidence so recorded shall be got done by Court Commissioner and be supplied to all parties on the very same day.”

Through the petition, there were submissions made by the petitioner in relation to the recording of the evidence of the Local Commissioner with
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it having also been submitted that the petitioner herein had not consented to the recording of evidence before the Court as also reflected by the observations in the impugned order to the effect : -

“Counsel for plaintiff has submitted that they have no objection to recording of plaintiff evidence before the Court Commissioner and will pay the expenses of Local Commissioner.”

thus submitting to the effect that the non-opposition of the defendant / petitioner in relation thereto is not reflected even in the impugned order.

During the course of the hearing on 18.12.2018, learned counsel for the petitioner had sought to limit the prayer made in the petition seeking that the evidence be recorded in the Court of the Presiding Officer of the Court concerned and not through the Local Commissioner and thus it was only to this limited extent, notice of the petition and the accompanying applications was issued to the respondent.

Learned counsel for the respondent submits that there is no opposition to the prayer made by the petitioner seeking that further evidence be recorded in the matter by the learned Trial Court. Taking the said aspect into account, it is directed that the evidence so far recorded shall be taken into account by the learned Trial Court for adjudication of the *lis*. However, the objections, if any, in relation to the mode of proof that has been led before the Local Commissioner may be raised by either party before the learned Trial Court in the case of evidence to be recorded. To this limited extent, the impugned order is modified to the effect that the evidence in the matter be henceforth recorded by the Presiding Officer of the Court concerned.

Parties are directed to appear before the learned Trial Court on 16th January, 2019.

The petition is disposed of.

ANU MALHOTRA, J

JANUARY 08, 2019/MK