



\$~1(Appellate)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 370/2022

CHANDNI DUGAR Petitioner

Through: Mr. M.K. Arora, Adv.

versus

KHEM CHAND MUKIM Respondent

Through: Mr. Rishubh Mistry and Mr.
Ajay Kumar for Mr. D.K. Rai, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% 18.07.2022

1. Having perused the record and having heard learned Counsel for the petitioner at some length, I confess that I am completely clueless as to how the petitioner deemed the present case fit to invoke Article 227 of the Constitution of India.

2. This Court has been observing, time and again, that there appear to be serious misconceptions regarding the scope and ambit of Article 227 of the Constitution of India. Several of the petitions, which have come up before this Court, seek intervention by this Court under Article 227 by effectively calling upon this Court to steer and navigate the proceedings before the court below. Article 227 is not intended to serve any such purpose. The Court, under Article 227, exercises superintending jurisdiction. Alternatively, it could be said that the court acts in its supervisory capacity. It is only, therefore, where the court below, while exercising its judicial powers, commits an error



that calls for correction in the exercise of supervisory jurisdiction, that this Court would step in.

3. In *Sadhana Lodh v. National Insurance Co. Ltd.*¹, the Supreme Court has clarified, unexceptionably, that the Article 227 court is not concerned with the correctness of the order under challenge. One may say that Article 227 concerns itself more with the Court which passed the order than the order passed by the Court. Article 227 jurisdiction is meant to be exercised in sparing and rare cases where the manner of exercise, by the court below, of the jurisdiction vested in it, calls for supervisory correction, essentially to ensure that such an occasion does not arise again.

4. The prayer in the present petition, reads thus:

“It is, therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to:-

- i) summon the trial court record;
- ii) accept and admit this petition;
- iii) stay the proceedings;
- iv) set-aside the impugned orders dated 24.03.2021 and 1.02.2022 passed by the Hon'ble court of Ms. Pooja talwar, Ld. ADJ (south), Saket courts, Delhi in suit no. 11/2019 titled as "khem chand mukim vs chandni dugar and ors" as well as the order dated 28.03.2022, passed by the Hon'ble court commissioner, in the interest of justice;
- v) to pass the certain directions to the trial court to decide the pending application at priority, before proceeding further in the pending trial,

¹ (2003) 3 SCC 524



vi) Any other or further relief which this Hon'ble Court deems fit and proper be also passed/ granted in favour of the petitioners and against the respondents, in the facts and circumstances of the case, in the interest of justice.”

5. As is apparent from a reading of the aforesaid prayer, the petitioner is assailing two orders passed by the learned Additional District Judge on 24th March, 2021 and 1st February, 2022. Both orders have been passed in CS 11/19 (*Khem Chand Mukim v. Chandni Dugar & Anr.*).

6. It is worthwhile to reproduce these two orders, as they manifestly disclose the completely misdirected nature of the present petition:

Order dated 24th March, 2021

“CS No. 11/19
Khem Chand Mukim
Vs.
Chandni Dugar And Anr.

24.03.2021

Present: Sh. Ashok Dang, counsel for plaintiff with plaintiff.
Defendant no.1 in person.
Sh. D K Rai and Ms. Laxita Arya, counsels for defendant no.2

An application has been filed under section 151 CPC by defendant no.1. Copy supplied. Let reply to the same be filed with advance copy to other side.

An application under order 39 rule 2A CPC is also pending. Since counsel for defendant no.1 is not available



and counsel for plaintiff has hearing before the Hon'ble High Court of Delhi, accordingly, passover is not possible.

Both the said applications shall be heard together. The case is otherwise at the stage of evidence; issues have already been framed and parties have consented for appointment of the Local Commissioner for recording the evidence.

Both the parties have agreed for evidence to be recorded before the Local Commissioner. However fee of the Local Commissioner shall be paid by the plaintiff since the defendant is not inclined to pay the same.

In view of the same, **Sh. C K Chaturvedi, Retired District Judge, Chamber No.885, Lawyers Chambers, Saket, Delhi-110017, Mobile No.9810652722**, is appointed as Local Commissioner for recording of evidence of plaintiff as well as defendant evidence under Order 18 Rule 4 CPC.

The terms of the assignment of the case are as under-

1. Schedule of Evidence- Evidence shall be recorded preferably from the assigned day onwards. If it is not possible on the same day, then on the next day. Evidence shall continue on day to day basis, till conclusion. Any alteration in schedule for recording of evidence if needed shall be decided by the Ld. Commissioner in consultation with the both the parties.

2. Production of Documents for Cross-examination- In case the opposite side is desirous of production of any document for the purpose of cross-examination, steps be taken well in time.

Recording of evidence by the Commissioner-

1. Place and Time- Ld. Commissioner shall record evidence in the Court room/ in the court commissioner's room as per availability. Evidence can be recorded between 04.00 PM to 06.00 PM on each day in the court room and can be carried on beyond this period, if agreed by both the parties.



2. **Chronology of Recording-** Ld. Commissioner shall proceed to record the examination by first recording the deposition of litigating party before examining additional summoned witnesses. Oath shall be given to the witnesses under examination as a delegate of the Court as per Oaths Act.

3. **Manner of Recording of Evidence-** The evidence shall be preferably typed on a computer or in case of nonavailability thereof, it shall be neatly hand written and miscellaneous expenses in this regard shall be borne by the plaintiff. Once started, the evidence shall be concluded either on same day or within the shortest possible time.

4. **Exhibition of Documents-** Ld. Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by the either side, the objection shall be recorded (if required, in some detail) and left open with an assurance that mere marking of such exhibits will not be treated as conclusive proof thereof and that admissibility of such document shall be decided by the referral Court at final stage.

5. **Original Documents to be Retained by Parties-** Ld. Commissioner shall make an observation in the record of evidence of all original documents produced and he shall sign the exhibits with an endorsement OSR wherever necessary and the parties producing a document may be required to show the same to the court at a later stage, if required.

6. **English Language-** The evidence/ proceeding sheets shall be recorded by the Court Commissioner in English language. Once started, the cross-examination shall preferably continue on day to day basis.

7. In case an evidence schedule is fixed and adjournment is sought by the opposite side without 24 hour advance notice,
the cost of that day's proceedings shall be borne by the



defaulting party.

8. Question-Answers- On the request of Id. Counsel cross-examining the witness, if required, only certain portions of deposition may be recorded in question-answer form, in order to elicit clarity and completeness of answer.

9. Recording of Objections- All the objections raised during cross-examination/re-examination shall be recorded in the deposition under title objections and shall be left open for the decision of the Court at the stage of final arguments. Witness shall not refuse to the answer the question raised.

10. Questions to be allowed- In case Id. Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer.

11. Assisting the Witness- In case witness is unable to understand the question put to him, Id. Commissioner shall elaborate the same in an easy to understand manner in an impartial way.

12. No Third Person Intervention- Id. Commissioner shall ensure that the witness is not assisted by his Id. Counsel or any other third party while under cross-examination.

13. Recording of Demeanour of Witness- Id. Commissioner shall record the demeanour of the witness where ever it is found pertinent and necessary for sharing with the Court.

14. Witnesses to sign all pages- Id. Commissioner shall obtain signatures of both the sides as well as witnesses on each and every page of recording of evidence apart from signing them himself. Uncertified copy of the evidence recorded, shall be provided by the Local Commissioner to the parties.

15. Safe keep of Original Deposition- Id.



Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.

16. Miscellaneous Proceedings- Ld. Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court with the report.

Summoning of Official Witnesses-

1. **Summons from Court-** In case a litigating party is desirous of summoning an official witnesses, it shall obtain summons from the Court with an endorsement that witness shall appear before the Ld. Commissioner for recording of evidence on scheduled date, time and place.

2. **Diet Money-** Diet money. shall be paid to such witness by summoning party as per rules.

Advisory to Ld. Commissioner-

1. Ld. Commissioner is expected to conduct in an impartial manner, be polite, maintain confidentiality and shall not solicit professional work from the parties, and shall not accept remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court. He shall be non-judgmental, shall not criticize the professional conduct of litigating parties, lawyers on their understanding of law of either of the parties or ridicule them in any manner. He shall be punctual. In case of any foreseen circumstances warranting change of dates of hearing, for his own case or the request of other side, he shall apprise the other side in advance via phone call, email, sms etc.

2. **No Third Party Sharing-** He shall not allow the deposition to be inspected by any third party and shall not share a copy thereof with anybody stranger without permission of the Court.

3. **Inspection-** He shall not allow any party to



inspect the recorded proceedings in his absence.

4. **Recusal-** In case either of the parties or Ld. Counsel for the parties are related or closely known to Ld. LC, he/she shall recuse self from the case and inform the referral Court.

Remuneration of Ld. Commissioner-

1. **Mode of Payment-** Such remuneration shall be paid by the party directly for each day's work either by way of cash, cheque or draft against due receipt.

2. **Fee to be paid-** Remuneration for recording of evidence is fixed at Rs.5000/-per sitting of two hours. The Stenographer can either be arranged by a litigating party on its own cost or in case the same is arranged by Ld. LC, then the actual cost of typing/ printing shall be reimbursed by the party to Ld. LC. Ahlmad of the court shall provide the court record to enable the examination of the witnesses and cost of Rs.500/- per sitting shall be paid to the Ahlmad. Ahlmad shall ensure the safe custody of the court record during the proceedings.

3. **To be added as Litigation Cost-** All payments shall be redeemable as cost of litigation at the end of the suit.

Judicial Intervention during recording of evidence-

1. **Parties to Cooperate-** It is expected that both the sides will cooperate with Ld. **Local Commissioner** as well as each other and record evidence in a peaceful manner.

2. **Dissolution of stalemate-** In case of any conflicting circumstances they shall resolve issues at their own level with the active help of Ld. Commissioner.

3. **Court Intervention-** However, in case of any unforeseen situation requiring judicial intervention, Ld.



Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

Miscellaneous Applications-

1. Moving the Application- In case either of the party is desirous of moving any miscellaneous application viz. amending of pleadings, interim injunction etc. they shall share an advance copy with the opposite side and reply thereof, if any, shall be shared within seven days.

2. Date of Hearing- Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court in with the help of Reader of the Court and shall not wait till next date fixed for hearing.

All such miscellaneous applications shall be separately registered, numbered and indexed as an extension of main suit number.

3. Evidence not to be stalled- It is clarified that unless Ld. Local Commissioner is of the view that the application is such that evidence cannot progress further be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

Once the evidence commences, Ld. Local Commissioner is directed to not to give date of more than five days between the two dates unless the evidence is completed. Local Commissioner is also directed to not adjourn the matter telephonically at the mere asking of the counsels. Local Commissioner shall provide the copy of evidence and proceedings for each date to both the parties through email.

Both the parties are directed to fix a date to appear before Ld. Local Commissioner as per their convenience. Copy of this order be given dasti.

Be listed for report of Local Commissioner on **04.08.2021.**



(Pooja Talwar)
ADJ-01 (South)
District Courts, Saket
New Delhi/24.03.2021”

Order dated 1st February, 2022

“Through Video Conferencing on CISCO WebEx

CS No. 11/19
Khem Chand Mukim
Vs.
Chandni Dugar And Ans.

01.02.2022

Present: None for plaintiff.
Sh. D K Rai, counsel for defendant no.2.

Be listed for arguments on 03.05.2022.

(Pooja Talwar),
ADJ -01, South District,
Saket Court, ND/01.02.2022.”

7. The order dated 24th March, 2021 does only three things. Firstly, it directs a reply to be filed in an application filed by the petitioner (Defendant 1 in the suit before the learned ADJ) under Section 151 of the Code of Civil Procedure, 1908 (CPC). Secondly, it notes the fact that a passover was sought for arguments in the application under Order XXXIX Rule 2A of the CPC, which was not possible as learned Counsel for the plaintiff (Respondent 1 herein) was not available. Accordingly, the application under Order XXXIX Rule 2A has been adjourned with the observation that it would be taken up alongwith the application under Section 151 of the CPC. Thirdly, it records the consent, of all parties, for appointment of a local



commissioner to record evidence, and proceeds to appoint a retired judicial officer as the local commissioner, fixing the terms of the commission. Though Mr. M.K. Arora, learned Counsel for the petitioner has sought to contend that his client did not consent to such appointment, the submission cannot be accepted as the order records the presence of learned Counsel for the plaintiff and Defendant 2 as well as the presence, in person, of Defendant 1 (the present petitioner).

8. This is all that the order dated 24th March, 2021 does. As I have already observed, it befuddles the imagination as to how this order would merit interference under Article 227 of the Constitution of India. It is obvious that no exemption can be taken to the direction to file a reply to the application under Section 151 of the CPC or to the observation that the application under Order XXXIX Rule 2A would be heard alongwith the said application. As regards the appointment of a local commissioner to record evidence, the order was passed with consent of the parties, and, accordingly, the learned ADJ cannot be said to have committed any such error in appointing the local commissioner to record evidence and fixing the terms of the local commissioner, as would call for supervisory correction under Article 227 of the Constitution of India.

9. The second order under challenge, dated 1st February, 2022 merely lists an application, filed by the petitioner under Order VII Rule 11 of the CPC for arguments on 3rd May, 2022. Mr. Arora submits that the application was elementary and could have been disposed of on the very same day.



10. It is for the Court that is seized with the application to decide the manner in which it would be taken up and heard for disposal. Courts have to prioritise the court work with them. If the learned ADJ deems it appropriate to hear arguments on an application on a particular day, the Court cannot monitor the functioning of the court below and direct it to take up the application for hearing forthwith, unless, by not doing so, irreparable loss or prejudice results.

11. No such case is made out in the present petition.

12. For the aforesaid reasons, this petition, which is thoroughly misconceived, is dismissed with no orders as to costs.

C.HARI SHANKAR, J

JULY 18, 2022/kr