



2023:DHC: 7117



\$~2

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

Date of decision: 26.09.2023

+ **CM(M) 1316/2022**

HARSHITA G. GANDHI

..... Petitioner

Through: Ms.Alkanshree Dahar,
Ms.Ruchi Muajal, Mr.Amolak,
Ms.Smriti, Mr.D.Moitra and
Ms.Jyotika Malhotra, Advs.

versus

NIMIT GANDHI

..... Respondent

Through: Mr.Sunil Mittal, Sr. Adv. with
Ms.Seema Seth, Mr.A.K.
Pandey and Ms.Muskaan,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition was disposed of by the order dated 07.12.2022 appointing Ms.Kiran Nath, learned Principal and Sessions Judge (Retired) as a Local Commissioner to record evidence of the parties in the HMA No. 1070/2020, titled *Nimit Gandhi v. Harshita G.Gandhi*, pending adjudication before the learned Judge, Family Court-01, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Family Court'). It was further directed that the learned Local

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 03.10.2023

13:36:57

CM(M) 1316/2022

Page 1 of 9



2023:DHC:7117



Commissioner shall make an endeavour to follow the timelines for recording the evidence, as prescribed in the order dated 02.06.2022 passed by the learned Family Court.

2. I must herein note that the above order was passed as the petitioner herein sought substitution of the learned Local Commissioner being another Retired Learned Additional District Judge appointed by the learned Family Court vide its order dated 02.06.2022. The learned counsel for the petitioner submits that the petitioner was, in fact, aggrieved of the appointment of the learned Local Commissioner for recording of the evidence, and had sought recall of the order dated 02.06.2022 passed by the learned Family Court. She submits that the instant petition was filed challenging the order dated 29.10.2022 passed by the learned Family Court by which her application seeking recall of the order dated 02.06.2022 had been rejected.

3. This Court in its order dated 07.12.2022, had observed as under:

“2. When the matter was taken up for preliminary consideration on 29.11.2022, learned counsel for the petitioner had submitted that the petitioner was compelled to move an application to seek recall of the order dated 02.06.2022 as she was seriously aggrieved by the manner in which the present LC was recording the evidence. On the other hand, it was the submission of learned senior counsel for the respondent that the present L.C was acting fairly and was recording the evidence strictly as per law. However, after some arguments, he had submitted that in order to expedite the trial, the respondent did not want to join issues with the petitioner on

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 03.10.2023

13:36:57

CM(M) 1316/2022

Page 2 of 9



this aspect and was agreeable for appointment of another LC in lieu of the LC already appointed by the learned Family Court for recording of evidence.

3. In the light of the aforesaid, it was put to the learned counsel for the petitioner as to whether he would be agreeable for appointment of another retired Judicial Officer as the LC in lieu of the LC earlier appointed by the learned Family Court.

4. Both sides had then prayed for time to furnish names of four retired Judicial Officers, who they were agreeable to be appointed as the LC in lieu of the LC already appointed. The matter was therefore adjourned.

5. Today, Mr. Atul Nagarajan, who has now been engaged by the petitioner enters appearance and seeks to contend that keeping in view the nature of questions which may be necessary to be put during the cross examination for adjudication of the issues raised before the learned Family Court, the petitioner does not want the evidence to be recorded by any Local Commissioner. He, however, concedes that none of these grounds have been raised in the petition.

6. From a perusal of the record, I find that the grounds which are now being sought to be raised were neither raised in the present petition nor were argued by the petitioner when the matter was taken up for consideration on 29.11.2022. Merely because the petitioner has now engaged a new counsel to argue the matter cannot be a ground for her to wriggle out from the stand taken by her on 29.11.2022 that she would be agreeable for appointment of another LC.

7. However, taking into account that the petitioner has expressed an apprehension that the present LC appointed by the learned Family Court may be biased against her, this Court deems it appropriate to terminate the mandate of the present LC who was appointed by the learned Family Court on 02.06.2022 and appoint another LC in his place. The



orders dated 02.06.2022 and 29.11.2022 are, accordingly set aside and the mandate of Sh. Rakesh Kumar, Retd. Learned Additional District Judge as the LC, is terminated.”

4. The order dated 07.12.2022 of this Court in the instant petition was challenged by the petitioner by way of Special Leave Petition, being SLP(C) Diary no.6312/2013. The same was dismissed by the Supreme Court vide its order dated 21.04.2023.

5. The learned Local Commissioner appointed by this Court vide order dated 07.12.2022, has now addressed an email dated 17.07.2023 to the learned Registrar General of this Court, which reads as under:

*“Dear Sir,
I was appointed as a substitute LC in the aforementioned matter by the Hon'ble High Court of Delhi vide order dated 07.12.2022.
A whats app group was formed on the directions of the Hon'ble Family Court so as to facilitate the fixing of the dates for recording evidence. However, the respondent has converted that into a portal for airing her grievances against the petitioner, the petitioner counsel as well as the undersigned. This continues despite my repeated requests to maintain the dignity and decorum of the office of the LC who works under the authority of the Hon'ble court. Messages sent by The respondent and unfortunately even her counsel are all disrespectful, insinuating, mocking and alleging bias. It is apparent from the sequence of events that the respondent does not want the recording of evidence to proceed further. I have spent more time and effort on adjourning this case than it would have taken to record the evidence. The counsel for the respondent also questions my understanding of law and procedures and is advising me on what to do*



2023:DHC: 7117



and how to proceed in the light of their messages.

In these circumstances I do not find it fit to continue the proceedings as an LC in this case. I would thus like to recuse myself as the LC in this case from any further proceedings.

Please also find attached herewith the screen shots of the messages in the said whats app group for reference.

Submitted.”

6. The learned Local Commissioner has also annexed various WhatsApp chats that have been exchanged between the parties, their counsels and the learned Local Commissioner.

7. Clearly, the petitioner herein, who is the respondent before the learned Family Court and referred to as the respondent in the above email, is making a mockery of the Court system by first seeking a substitution of the learned Local Commissioner appointed by the learned Family Court, which was agreed to as a matter of indulgence by this Court vide its order dated 07.12.2022, and now making allegations against the substitute Local Commissioner as well. She appears to be habitually making instigating remarks, not only against the learned Local Commissioner but also against the learned counsel appearing for the respondent herein. This practice needs to be dealt with firmly.

8. Mr.Sunil Mittal, learned senior counsel for the respondent, has also brought to my attention the order dated 09.05.2023 passed by this Court in another petition filed by the petitioner herein, being CM(M) 754/2023, titled as ***Harshita G Gandhi v. Nimit Gandhi***, which, in

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 03.10.2023

13:36:57

CM(M) 1316/2022



2023:DHC: 7117



turn, challenged the order dated 17.04.2023 passed by the learned Family Court. The learned Family Court by the order impugned in the said petition, had rejected the request of the petitioner herein for postponing the date of 18.04.2023 fixed by the learned Local Commissioner for cross-examination of the witnesses of the respondent herein.

9. This Court by the order dated 09.05.2023 disposed of the said petition by passing the following directions:

“5. In the light of the aforesaid stands taken by the parties and taking into account that it would be in the interest of justice that the matter proceeds only after the petitioner is granted an appropriate opportunity to cross-examine the respondent’s witnesses, the impugned orders are set aside. The learned Local Commissioner, appointed by this Court, is directed to grant one opportunity to the petitioner to cross-examine the respondent’s two witnesses. It is made clear that the cross-examination will be carried out by the petitioner within three dates as may be fixed by the learned Local Commissioner commencing from the first week of July, 2023 as per her convenience. The petitioner will not be permitted to seek any adjournments on those dates and therefore in case the petitioner’s lawyer is not available on any of these dates, she will make suitable arrangements so that the cross-examination of the respondent’s two witnesses is concluded in a time bound manner. It is further directed that within one week of the petitioner concluding the cross-examination of the respondent’s two witnesses, she will tender her own evidence. This order would, however, be subject to the petitioner paying a further sum of Rs.50,000/- to the learned Local

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 03.10.2023

13:36:57

CM(M) 1316/2022

Page 6 of 9



2023:DHC: 7117



Commissioner towards her fee. ”

10. The learned senior counsel for the respondent submits that even this order was challenged by the petitioner before the Hon'ble Supreme Court by way of a Special Leave Petition, being SLP(C) No. 15540/2023. The same was also dismissed by the Supreme Court vide its order dated 31.07.2023.

11. The learned senior counsel for the respondent points out that the petitioner has not availed of the opportunity granted by this Court vide its order dated 09.05.2023, and has instead created such ugly circumstances forcing the learned Local Commissioner to now address the email dated 17.07.2023 to the Registrar General of this Court, seeking her recusal as a Local Commissioner.

12. He submits that as the petitioner has failed to avail of the opportunity granted by this Court vide its order dated 09.05.2023, in any case, her right to lead evidence should be closed and there is no need to appoint a substitute Local Commissioner.

13. The learned counsel for the petitioner, at this stage, profusely tenders her apology for the conduct of the petitioner before the learned Local Commissioner. She submits that another Local Commissioner be appointed for recording the evidence of the parties.

14. I see absolutely no reason to grant further indulgence to the petitioner for her conduct clearly smacks of *mala fide* and total disrespect to the officers appointed by this Court and to the Court process.

15. As pointed out by the learned senior counsel for the respondent,

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 03.10.2023

13:36:57

CM(M) 1316/2022



as the petitioner has failed to avail of the indulgence granted by this Court vide its order dated 09.05.2023 passed in CM(M) 754/2023, in any case, the evidence of the parties stand concluded and there is no need for appointing a substitute learned Local Commissioner.

16. Accordingly, Ms.R.Kiran Nath, learned Principal and Sessions Judge (Retired), is discharged from acting as a Local Commissioner in the HMA petition bearing No. 1070/2020 titled ***Nimit Gandhi v. Harshita G.Gandhi.***

17. The learned senior counsel for the respondent submits that the fee of the learned Local Commissioner has been paid in terms of the order dated 07.12.2022 of this Court. He submits that, however, the petitioner did not pay the further sum of Rs.50,000/- to the learned Local Commissioner towards her fee, as had been directed in the order dated 09.05.2023 passed by this Court in CM(M) 754/2023.

18. The learned counsel for the petitioner submits that this fee was not paid as the learned Local Commissioner had addressed the email seeking recusal prior to the dates fixed for recording of evidence.

19. I again see no merit in such submission of the petitioner.

20. The order dated 09.05.2023 had granted indulgence to the petitioner to lead evidence subject to the condition that the petitioner pays a further sum of Rs.50,000/- to the learned Local Commissioner towards her fee. Admittedly the said fee has not been paid by the petitioner and, therefore, in any case, the indulgence does not survive.

21. As I find that the petitioner has made a mockery of the system of this Court, the petitioner is, therefore, burdened with costs quantified at Rs.25,000/-, to be deposited with the Delhi High Court



2023:DHC: 7117



Legal Services Committee within a period of four weeks from today.

22. The learned Family Court shall proceed further with the divorce petition filed by the respondent herein, in accordance with the law.

23. This Court expresses its regret to the learned Local Commissioner for the agony she had to suffer because of the appointment made by this Court.

NAVIN CHAWLA, J

SEPTEMBER 26, 2023/ns/AS

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 03.10.2023

13:36:57

CM(M) 1316/2022