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

% Judgment delivered on: 20.12.2022

+ CM(M) 1443/2022, CM APPL. 55319/2022 & CM APPL. 55320/2022

ARMOUR SECURITY PVT. LTD. Petitioner

versus

VIJAY NIRMAN COMPANY PVT. LTD. Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ankur Aggarwal and Mr. Kunal Kalra and
Mr. Nitin Sharma, Advocates.

For the Respondent : Mr. Ajay Raghav, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. With the consent of parties, the present petition is taken up for disposal.
2. Mr. Kalra, learned counsel appearing for the petitioner submits that the petitioner challenges the order dated 13.12.2022, whereby, the learned Trial Court had dismissed the application under Section 151 of the CPC, 1908, filed by the petitioner seeking modification of the earlier order dated 24.05.2022 whereby, the recording of evidence was to be carried before the Local Commissioner, who was to be paid Rs. 25,000/- per witness as his fee.
3. Learned counsel submits that in view of the recusal of the Local Commissioner appointed earlier, the learned Trial Court appointed a new

Local Commissioner fixing the fees as Rs. 25,000/- per witness, as fixed earlier.

4. Learned counsel submits that by way of application under Section 151 of the CPC, 1908, and on the basis that the new Local Commissioner was an Advocate with only five years of experience, it was prayed that a reasonable fees of Rs. 3,000/- per sitting may be fixed for recording of evidence of the parties.

5. Learned counsel submits that the learned Trial Court did not find any reasons to modify the order and dismissed the application filed by the petitioner.

6. Issue notice. Notice is accepted by Mr. Ajay Raghav, learned counsel appearing for respondent.

7. The submissions made by learned counsel for the petitioner, appears to be a justifiable ground coupled with the fact that Mr. Ajay Raghav, learned counsel appearing for the respondent also agrees that the fee of Rs. 25,000/- as fixed earlier is way too high and Rs. 3,000/- per hearing is a reasonable amount, which the parties will be able to afford without any financial constraint.

8. In the opinion of this Court too, the obligation of recording the evidence is originally with the Civil Court and permitting the recording of evidence through a Local Commissioner is an exception. Moreover, parties/ litigants cannot be compelled to get the evidence recorded without their consent and willingness through a Court appointed Local Commissioner, nor can they be directed or compelled to pay an amount which may not be within their budget.

9. In view of the facts and circumstances of the case, as well as

consent by the learned counsel for the respondent, the impugned order dated 13.12.2022 is quashed and set aside.

10. This Court fixes the fee as Rs. 3,000/- per sitting to the Local Commissioner for recording of evidence of the parties, as consented to between the parties, as also on the reasoning given by this Court.

11. The petition along with pending applications is disposed of in the above terms with no order as to costs.

TUSHAR RAO GEDELA, J

DECEMBER 20, 2022/nd

