



A.No.5731 of 2023

in C.S.No.82 of 2019

N.SATHISH KUMAR, J.

This application has been filed seeking for appointment of Advocate Commissioner for recording evidence of the applicant/plaintiff at NB-9, Seveenthi TSKR Road, Chennai – 600 028.

2. This application has been filed mainly on the reason that the plaintiff is the Ex-Chief Minister of State of Tamil Nadu and presently, the General Secretary of the AIADMK and also the Leader of the Opposition for the Tamil Nadu State Assembly. The suit has been originally filed against the defendants for claiming damages for alleged defamatory statements published in the social media. Hence, the suit has been primarily proceeded for the alleged defamatory statement which is said to have tarnished the image of the plaintiff. Now, the matter is posted for trial. The plaintiff has come up with this application seeking for appointment of Advocate Commissioner for recording evidence mainly on the ground that since he is in pre-occupation as a General Secretary of the AIADMK and serving as the Leader of the Opposition for the Tamil Nadu State Assembly, he will not be in a position to appear personally before the Court which will



also lead inconvenience to the litigants.

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3. This application has been opposed by the first defendant mainly on the ground that only if the plaintiff was examined, there will be transparency and the trial could be conducted in a fair manner and further, another ground taken is that the application has been filed belatedly after a period of two years.

4. Mr.N.R.Elango, learned Senior Counsel appearing for the first defendant submitted that when the matter was posted before the learned Master for recording evidence, more than 21 adjournments have been taken by the plaintiff. This application has been filed only to drag on the proceedings. Further, it is the contention that certain questions are required to be asked as pleaded in the plaint during the cross examination. Only if the plaintiff is examined in the open Court, those questions could be asked and trial could be conducted in a fair manner and there will be transparency in the trial. Hence, opposed the application.

5. The learned counsel for the plaintiff submitted that appointing Advocate Commissioner to record the evidence is the discretion of the Court. In fact, examination of the witness or a party during the trial is a



choice of the party and the discretion always vests with the Court. Further, it is the contention that the plaintiff being a political leader, the Ex-Chief Minister for the State of Tamil Nadu and presently serving as the Leader of the Opposition, is facing difficulty in appearing before the Court, as it will lead inconvenience to the other litigants. Therefore, the appointment of the Advocate Commissioner is in the interest for the party as well as the litigants.

6. I have perused the entire materials. Without going into the merits of the case, it is relevant to note that Order XVIII Rule 4 and Order XXVI Rule 4A of Code of Civil Procedure were amended by Act 22 of 2002 and Act 46 of 1999 respectively, w.e.f. 01-07-2002, wherein, the evidence of the witness can be examined by the Commissioner also. The Commissioner also, while recording the evidence, may record such remarks including the demeanour of the witness.

7. Therefore, the apprehension of the learned Senior Counsel for the first respondent that the Commissioner cannot make a remark and note down the demeanour of the witnesses has no legs to stand. Once, the Commissioner is appointed by the Court to record the evidences, he is entitled to record such remarks as to the demeanour of the witness or the



parties during such proceedings.

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8. Such view of the matter, the apprehension of the learned Senior Counsel for the first respondent that sensitive questions cannot be asked while examining the parties during the Commission cannot be countenanced.

9. Even during the the cross examination, the parties are at liberty to discredit the witness in the manner known to law. Therefore, the apprehension or the contention made by the first respondent/defendant in this regard also has to be rejected.

10. Considering the fact that the petitioner is a former Chief Minister of the State of Tamil Nadu and presently the leader of opposition party, directing him to appear before the Court, in fact, it may lead to unwarranted crowd in the Court premises also. To avoid those things, this Court is of the view that he can be examined through the Advocate Commissioner.

11. Accordingly, this Court appoints, Mr.S.KARTHIKEI BALAN, No.224, KB Law Chambers, 4th Floor, LIC Building, Near Hot Chips Hotel, NSC Bose Road, Parrys Corner, Chennai - 600 001, Mobile



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No.98945 02341 is appointed as an advocate commissioner for recording evidence of the plaintiff in both chief and cross examination. The remuneration to the Advocate Commissioner is fixed at Rs.50,000/- and the same shall be paid by the plaintiff directly to the Advocate Commissioner. The Advocate Commissioner shall inform the dates of examination to both sides and after getting convenient time from both sides, he shall record and complete the evidence at the plaintiff's official residence namely NB-9, Seveenthi TSKR Road, Chennai – 600 028.

11. Both the chief and cross examination of the witnesses shall be completed before 15.12.2023 and file the evidence of the witnesses along with the Advocate Commissioner's report, before this Court, on 15.12.2023.

07.11.2023

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