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

% Judgment delivered on: 25.01.2023

+ CM(M) 117/2023 & CM APP No. 3739/2023

SHANTI MUKAND HOSPITAL

..... Petitioner

versus

TRIO TREE TECHNOLOGIES PVT LTD

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. K. K. Makhija, Ms. Sumedha Dua and
Ms. Reeta Yagnik, Advs.

For the Respondent : Ms. Zainab Ansari, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 3739/2023-EXEMP.C/COPY

1. This is an application seeking exemption from filing certified copies of the annexures.
2. Exemption is allowed, subject to all just exceptions.
3. Application stands disposed of.

CM(M) 117/2023 & CM APPL. 3738/2023-STAY

4. The petitioner challenges the orders dated 07.11.2022 and 14.12.2022 in CS(comm.) 227/21 titled "*Shanti Mukund Hospital vs. M/s Trio Tree Technologies P Ltd & Ors.*" whereby the learned Trial

Court had on the assumed failure of the absence of the main counsel for the parties to be present on 07.11.2022, though witness was present, appointed local commissioner to record the evidence of the parties and fixed the fees of Rs.20,000/- per witness and also fixed the schedule of examination of the plaintiff as well as for the defendant for two dates each.

5. Learned counsel appearing for the petitioner as well as learned counsel appearing for the respondents jointly submits that a joint application under Section 151 CPC, 1908 was filed seeking recall, reconsideration and modification of the order dated 07.11.2022 praying inter alia that the appointment of the local commissioner and the direction for conducting recording of evidence of the witnesses before the learned Local Commissioner be modified and the recording of evidence be carried out before the learned Trial Court.

6. Learned counsel also submitted that in the joint application a further reason to recall the order was, that the parties would not be able to afford the fees of Rs.20,000/- per witness as directed vide the order dated 07.11.2022.

7. Learned counsel submit that despite the aforesaid submissions and pleadings, vide the impugned order dated 14/12/2022, the learned Trial Court dismissed the said application with cost of Rs.5,000/- each.

8. This Court has, on the various occasions, emphasised that primary responsibility of recording of evidence lies with the Court in seisin of the lis and the same cannot be transferred to local commissioners, even if the matters pertain to a Commercial Courts Act, 2015, unless there are compelling reasons.

9. This Court has also perused the impugned orders dated 07.11.2022 and 14.12.2022 and it appears that the learned Trial Court is in undue haste to complete the proceedings.

10. The learned Trial Court ought to be more sensitive to these aspects, specially when both the parties are *ad idem* to the fact that recording of evidence ought to be carried out before it, as well as the inability to pay such high fees of Rs.20,000/- per witness. This contention ought to have been considered by the learned Trial Court.

11. Be that as it may.

12. In view of the aforesaid, the orders dated 07.11.2022 and 14.12.2022 is quashed and set aside. The learned Trial Court is directed to record the evidence of the parties before it in all earnest.

13. It is informed that next date before the learned Trial Court is 16.02.2023. The parties shall appear before the learned Trial Court on 16.02.2023 and shall lead their evidence in accordance with law.

14. The petition is disposed of as no order as to costs.

TUSHAR RAO GEDELA, J .

JANUARY 25, 2023/ms