



2024:DHC:732-DB



\$~28

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

+ **FAO(OS) 15/2024 & C.M.Nos.5540-5541/2024**

KAMAL KANT RACHHOYA

..... Appellant

Through: **Mr.Swastik Singh and Mr.Atul Singh,**
Advocates.

versus

MANISH RACHHOYA

..... Respondent

Through: **Ms.Smita Maan with Mr.Vishal Maan and**
Mr.Kartik Dabas, Advocates.

%

Date of Decision: 31st January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned order dated 19th January, 2024 passed by the learned Single Judge in I.A. No.18612/2023 in CS(OS) No.568/2021, whereby the respondent's application under Order XXVI Rule 2 CPC for appointment of Local Commissioner to record evidence of the parties was allowed and a former District & Sessions Judge was appointed as the Local Commissioner.

2. Learned counsel for the appellant states that the learned Single Judge failed to appreciate the law laid down in the case of *Nikhil Gupta vs. Tanu Gupta, 2022 SCC Online (Del) 1919*, whereby it was held that the power to



2024:DHC:732-DB



appoint a Local Commissioner has to be exercised carefully, and in a case where there is opposition to such appointment by any party, then the Courts should abstain from exercising such power in light of the potential difficulties that a Local Commissioner might face. He further states that no party can claim appointment of a Local Commissioner, as a matter of right.

3. This Court is of the view that the submission of learned counsel for the appellant is contrary to the Delhi High Court (Original Side) Rules, 2018 (hereinafter referred to as the 'Rules, 2018'), which provides that this Court *shall* appoint Registrars and Commissioners to record evidence. [See: Chapter XI Rule-1(ii) of Rules, 2018].

4. The judgement in the case of *Nikhil Gupta vs. Tanu Gupta* (supra) is clearly distinguishable as it pertains to a suit pending before the Trial Court and not this Court. Consequently, the effect and impact of the Rules, 2018 has not been taken into account in the said judgment.

5. Accordingly, the present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 31, 2024
KA