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

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*Date of decision: 10<sup>th</sup> July, 2024*

+ CM(M) 2881/2024 & CM APPL. 38024/2024

ANKUR GHILDIYAL

.....Petitioner

Through: Mr. Nitish Kumar Rai, Advocate.

versus

SANJEEV PURI

.....Respondent

Through: Mr. Sumesh Gandhi with Ms. Himali Gandhi and Mr. Tanmay Mehta, Advocates for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioner herein is defending a recovery suit before the learned Trial Court.
2. For the purposes of recording of evidence of defendant- Ankur Ghildiyal, the Court had appointed a Local Commissioner on 30.05.2023. The defendant appeared before the Local Commissioner and was partly cross-examined. Admittedly, that day, the defendant i.e. DW-1 Ankur Ghildiyal was accompanied by his counsel Mr. Ajay Gautam.
3. Since the cross-examination could not be concluded that day, the matter was taken up by the learned Local Commissioner, again, on 20.03.2024.
4. That day, the defendant was further cross-examined by the learned counsel for the plaintiff and the cross-examination was also concluded. It is



also borne out from the proceedings conducted by the learned Local Commissioner that the defendant had even brought one cheque towards cost of Rs.10,000/- which was handed over to plaintiff's counsel.

5. Admittedly, after the proceedings were over on 20.03.2024, a copy of the proceedings as well as of the deposition was supplied to both the sides and the original was directed to be placed on Court record.

6. It is stated that the evidence was recorded by the learned Local Commissioner in the Court premises.

7. The original proceedings placed before the learned Trial Court is filed herein as Annexure P-5 and the presence of the parties before the learned Local Commissioner is found recorded therein as under:-

*“PRESENT: Mr. Sumesh Gandhi and Ms. Himal Gandhi, Counsels  
for the plaintiff.  
defendant [DW-1]”*

8. However, the copy which was supplied to the parties was carrying the names of the counsel as under:-

*“PRESENT: Mr. Sumesh Gandhi and Ms. Himali Gandhi,  
Cousnels for the paintiff.  
Mr. Akshay Daniel, Counsel for the Defendant alongwith  
defendant.”*

9. Evidently, the name of Mr. Akshay Daniel, purported to the counsel for defendant, is reflected in the copies supplied to the parties but in the original, his name is conspicuously absent.

10. In the meanwhile, the defendant (petitioner herein) moved an application under Order XXVI Rule 12 (2) read with Section 151 CPC



contending that his counsel could not attend the matter on 20.03.2024 as he was travelling. It was also mentioned that believing that the cross-examination would be conducted in a fair manner, he submitted himself for cross-examination. He even signed the deposition-sheet without going through the same, trusting the same must be the replica of what he had deposed before the Court/Local Commissioner.

11. However, when the counsel for the defendant read the cross-examination and talked to the defendant, they got a shock as the answers recorded by the Local Commissioner were not in terms of his verbal deposition. It is also claimed by defendant that the copy of the order-sheet provided to him indicated that one Mr. Akshay Daniel was present with him but fact remains that on that day, no such counsel was present with him and, therefore, it was a clear case of manipulation on the part of the learned Local Commissioner.

12. Said application moved by the defendant was taken up by the learned Trial Court on 17.05.2024 and even the Local Commissioner was requested to appear and when asked, the learned Local Commissioner apprised the learned Trial Court that since the counsel for the defendant had told her that he would be taking action against her for incorrectly recording the presence of Mr. Akshay Daniel, she made the correction in the original sheet and struck off his name by putting fluid.

13. It seems that the learned Trial Court has taken strong exception to the aforesaid (mis)conduct of the Local Commissioner and has gone to the extent of observing that it was a manipulation of judicial record supplementing as to why action should not be initiated against her for the same.



14. However, since the application of the defendant was also dismissed, the defendant, feeling aggrieved, has challenged such order.

15. Learned counsel for the respondent appears on advance notice and accepts notice.

16. Heard.

17. It seems that the Local Commissioner, for the reason best known to her, put fluid in order to show that the defendant was not accompanied by any counsel. It was not warranted at all but, at the same time, the petitioner herein cannot claim that whatever had been recorded by the learned Local Commissioner was not as per the verbal deposition. It seems that he is trying to take some kind of undue advantage from the fact that the learned Local Commissioner, in her over-enthusiasm and zeal, had put fluid suggesting that the defendant was not represented by any counsel that day.

18. Admittedly, the petitioner is not a layman. He is an officer in Indian Navy and it is impossible to comprehend that he would not be knowing as to what was being dictated by the learned Local Commissioner on the basis of the verbal deposition made by him.

19. Moreover, he signed the deposition-sheet then and there. Later on, when he consulted his counsel, finding that some of the answers given by him in cross-examination were not looking comfortable from his perspective, it seems that some endeavour is being made so that entire such cross-examination is expunged or struck off the record.

20. The petitioner cannot be permitted to dig out any advantage from said irresponsible and imprudent act of learned Local Commissioner. Of course, the Local Commissioner should not have made any change in the order-sheet and should not have got carried away by the alleged utterances of



learned counsel for defendant and could have drawn another proceeding clarifying everything. Be that as it may, there is no reason to expunge the entire deposition because of the above misadventure of learned Local Commissioner.

21. Moreover, there was no occasion for the petitioner to have even moved application under Order XXVI Rule 12(2) which only contemplates an inquiry and in the garb of such application, the petitioner herein cannot be heard requesting re-recording of cross-examination and striking off whatever had been deposed by the him earlier before the learned Local Commissioner on 20.03.2024.

22. Thus, there is no merit and substance in the present petition.

23. It stands dismissed.

**(MANOJ JAIN)**  
**JUDGE**

**JULY 10, 2024/sw**