



2026:DHC:2427-DB



\$~39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RFA(COMM) 135/2025****M/S FUELCO INDUSTRIAL
CORP. & ORS.**

.....Appellants

Through: **Mr. Jai Wadhwa and Mr. Ronak
Karanpuria, Advs.**

versus

RAJ KUMAR SAXENA

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****ORDER (ORAL)**

%

19.03.2026**C. HARI SHANKAR, J.**

1. This appeal is directed against three orders passed by the learned District Judge (Commercial Court)¹ dated 30 September 2024, 23 July 2024 and 8 August 2024 in CS (COMM) 155/2021².

2. The defendant-respondent, who chose not to enter appearance, was proceeded *ex parte*, before the learned Commercial Court as well as before this Court.

3. The appellant-plaintiff thereafter produced a list of as many as 25 witnesses which it desired to examine, of which 20 were witnesses who had to be summoned.

¹ "the learned Commercial Court" hereinafter

² "the suit" hereinafter



2026:DHC:2427-DB



4. In these circumstances, the learned Commercial Court, by order dated 23 July 2024, which constitutes the first order under challenge herein, regretted its inability, given work pressure, to record the evidence itself and, therefore, appointed a local commissioner to do so, on or before 23 September 2024.

5. The appellant moved an application for modification of the order, pleading financial stringency and inability to disgorge the amounts specified, for recording of the evidence through commission.

6. Said application was disposed of, by the learned Commercial Court, by order dated 8 August 2024 (the second order under challenge herein), reducing the fee of the Local Commissioner but otherwise maintaining the earlier order.

7. As no steps were taken by the appellant, in compliance with the said orders, the learned Commercial Court, by order dated 30 September 2024 (the third order under challenge herein), dismissed the suit for non-prosecution.

8. The decision on whether to record evidence through Commission, or not, vests with the Court. Unless the exercise of discretion is palpably perverse, it is ordinarily not amenable to interference. The law, in this regard, has been authoritatively enunciated by the Supreme Court in *Salem Advocate Bar Association, T.N v. Union of India*³, which also rejected a submission that

³ (2005) 6 SCC 344



2026:DHC:2427-DB



recording of evidence through commission might be financially prejudicial to a party.

9. When this matter came up before us yesterday, we expressed our opinion that, if the appellant desired to examine 25 witnesses, even when the respondent was *ex parte*, and 20 of the 25 witnesses would have to be summoned, we would not be in a position to interfere with the orders under challenge, Mr. Jai Wadhwa, learned Counsel for the appellant, sought a days' time to seek instructions as to whether the number of witnesses could be reduced.

10. We have to record, with satisfaction, that Mr. Jai Wadhwa has, today, at the very outset, agreed to reduce the number of witnesses cited by him to two.

11. In that view of the matter, as only two witnesses are cited by the appellant-plaintiff, we are of the view that the services of a Local Commissioner would not be required, as the respondent is *ex parte* and his defence has already been struck off.

12. Accordingly, the impugned orders dated 30 September 2024, 23 July 2024 and 8 August 2024 are quashed and set aside.

13. The suit is restored to its original position.

14. Let the parties appear before the learned Commercial Court on 30 March 2026. On that date, the learned Commercial Court would fix a date for recording of evidence of the two PWs.



2026:DHC:2427-DB



15. The appeal is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 19, 2026/gunn

Signature Not Verified

Signed By: GUNN RFA(COMM) 135/2025
Signing Date: 24.03.2026
11:03:18

Page 4 of 4