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

Date of decision: 10.09.2026

CNR No. DLHC010430172026

+ CM(M) 2002/2026, CM APPL. 61708/2026 (Ex. From filing the certified copies of the annexures) & CM APPL. 61709/2026 (Stay)

TARUSHI RATHORE

.....Petitioner

Through: Mr. Vineet Jain, Advocate.

versus

SANJAY RATHORE

.....Respondent

Through:

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (Oral)

1. The present Petition has been filed under Article 227 of the Constitution of India, 1950, seeking to set aside the Order dated 12.08.2026 [**“Impugned Order”**] passed by the learned Judge, Family Court-02, Central, Tis Hazari Courts, Delhi [**“learned Family Court”**], in HMA No. 805/2023, whereby the learned Family Court has directed that the evidence be recorded before the learned Local Commissioner.

2. The learned Family Court has, in the Judgment Impugned, also set out in detail the manner in which the entire evidence is to be carried out, which reads as follows:



3.1. Assignment of case by court for recording of evidence-

3.1.1. Schedule of Evidence- Evidence shall be recorded preferably on the day & time fixed by Ld. Commissioner. If it is not possible on the same day, then on the next day. Evidence shall continue on day to day basis, till conclusion. Any alteration in schedule or recording of evidence, if needed, shall be decided by the Ld. Commissioner, after consulting all concerned.

3.1.2. Judicial File not to be sent- It is clarified that the judicial file shall not be sent or summoned for recording of evidence by the Ld. Commissioner.

3.1.3. Production of Documents for Cross-examination- In case the opposite side is desirous of production of any document by the witness or any other entity for the purpose of cross examination, including the documents which is already deposited in this court by a party, an application requesting the same shall be moved before this court expeditiously as per law.

3.2. Recording of evidence by the Commissioner-

3.2.1. Place and Time- Ld. Commissioner, shall record evidence only in the Tis Hazari Court Complex at the address agreed in writing by both sides within one week of this order. But in case both side parties so agree and give in writing to the Ld. Commissioner, within one week of this order, then such evidence can be recorded at any other Court complex in Delhi (eg. Patiala House Court complex, Karkardooma Court complex). But in any case such place shall not be other than a court complex in Delhi.

3.2.1.1. In case, both the parties failed to agree/furnish a particular place within one week, then LC shall be at liberty to decide the exact place, subject to parameters mentioned above. Ld. Commissioner shall intimate suitably both sides as well as this court in this regard.

3.2.1.2. Evidence shall be generally recorded between 10.00 AM to 5.00 PM. It can carry on beyond 5.00 PM as well in case both parties agree. It can even be recorded on a holiday if all the stake holder are comfortable and agreeable.

3.2.2. Chronology of Recording- Ld. Commissioner shall proceed to record the examination by first recording the deposition of party to present petition, before examining other witnesses.

3.2.3. Oath to Witnesses- Ld. Commissioner shall give oath to the witnesses under examination as a delegate of the Court as per Oaths Act.

3.2.4. Recording of Evidence- The evidence shall be preferably typed on a computer or in case of non-availability shall be neatly hand written.

3.2.5. Time Frame:-

3.2.5.1. Petitioner shall supply advance copy of examination in chief by way of affidavit of claimant (s) as well as his "non summoned" witness (s), if any within ten days from today to other parties.



3.2.5.2. Likewise, after conclusion of recording of claimants/petitioner side evidence, thereafter within next two weeks, respondent side shall supply advance copy of examination in chief by way of affidavit of respondent (s) as well as his "non summoned" witness (s), if any to other parties.

3.2.5.3. Ld. Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible, but not later than within 30 days of assignment of a case, which is extendable by the order of this court by another 15 days in case the evidence is not concluded despite best efforts, **only if application is moved before this court by any of the parties or Ld. LC.**

3.2.5.4. Both Claimant/Petitioner's evidence and respondent's evidence shall be concluded within 15 days each of initiation. In case there are more than two witnesses for each side, one week per witness may be added to the 7 days period.

3.2.6. Comfortable Sitting Space- All the witnesses and their Ld. Counsel shall be provided comfortable sitting space by coordination with both side Ld. counsels.

3.2.7. Exhibition of Documents- Ld. Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by the either side, the objection shall be recorded in some detail and left open and admissibility of such document shall be decided by the referring Court at final stage.

3.2.8. Original Documents to be Retained by Parties- Ld. Commissioner shall make an observation in the record of evidence of all original documents produced and he shall sign the exhibits with an endorsement OSR (original seen & returned) wherever necessary i.e. if any new documents produced as per law for first time directly before Ld. L.C.

3.2.9. English Language- On the first date, when all the concerned parties appear before the Commissioner he shall proceed to record the cross-examination and re-examination, if any, of a witness in English language.

3.2.10. Adjournments- Once started the cross-examination shall be continued on day to day basis. In case of any hardship viz. ill health, either case can be deferred, at the discretion of the Ld. Commissioner.

3.2.11. Question-Answers- On the request of Ld. Counsel cross-examining the witness, portions of deposition may be recorded in question-answer form, if the Ld. Commissioner deems it fit and necessary.

3.2.12. Recording of Objections- All the objections raised during cross-examination/re-examination shall be recorded in the deposition under titled objections and shall be left open for the decision of the Court at the stage of final arguments. Witness shall not refuse to the



answer the question raised on this account only-

3.2.13. Questions to be allowed- In case Ld. Commissioner finds any question not related to the face and issue, he shall record his objection, but shall allow the question to be put and witness must answer.

3.2.14. Assisting the Witness- In case witness is unable to understand the question put to him, Ld. Commissioner shall elaborate the same in an easy to understand manner in an impartial way.

3.2.15. No Third Person Intervention- Ld. Commissioner shall ensure that the witness is not assisted by his Ld. Counsel or any other third party while under cross-examination by way of verbal or non-verbal communication.

3.2.16. Recording of Demeanor of Witness- Ld. Commissioner shall record the demeanor of the witness where ever it is found pertinent and necessary for sharing with the Court.

3.2.17. Witness to sign all pages- Ld. Commissioner shall obtain signatures of both the sides on each and every page of recording of evidence apart from signing them himself. In case the witness refuse to sign, the Ld. Commissioner will still himself sign all such pages after noting that witness refused to sign. Ld. Commissioner shall record reasons, if any, stated by the witness for refusal to sign.

3.2.18. Copy of Evidence- All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.

3.2.19. Safe keep of Original Deposition- Ld. Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.

3.2.20. Miscellaneous Proceedings- Ld. Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court with the report.

3.2.21. Hostile Witness- In case a witness is sought to be declared hostile, than Ld. I.C. shall refer both the parties to Court within three days for exercising powers U/s. 154 Evidence Act.

3.2.22. Filing of list of witnesses- Both sides shall file list of witnesses preferably within 7 Days but not later than 2 week of identification of issues before this court ,while sharing an advanced copy thereof with the opposite Party/Parties.

3.2.23. *If so desired for the purpose of such evidence only, the original documents on record of Court, be released to the parties in lieu of photocopies for such purpose, as per the provision of CPC.*

3.3. Summoning of Official Witnesses:

3.3.1. Summons from Court- In case a litigating party is desirous of summoning an official witness, it shall obtain summons from the Court with an endorsement that witness shall appear before the address of Ld, Commissioner for recording of evidence on scheduled



date, time and place.

3.4. Advisory to Ld. Commissioner-

3.4.1. Impartial- Ld. Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.

3.4.2. Confidentiality- Ld. Commissioner shall maintain confidentiality during the whole process.

3.4.3. Integrity- Ld. Commissioner shall not except remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court.

3.4.5. Non-judgmental- Ld. Commissioner shall not criticize the professional conduct of litigating parties, lawyers on their understanding of law of either of the parties or ridicule them in any manner.

3.4.6. Coordination- In case of any foreseen circumstances warranting change of dates of bearing, for his own case or the request of other side, he shall apprise the other side in advance via phone call, email, sms etc

3.4.7. No Third Party Sharing- He shall not allow the deposition to be inspected by any third party and shall not share a copy thereof with anybody stranger without permission of the Court.

3.4.8 Inspection- He shall not allow any party to inspect the recorded proceedings in his absence.

3.4.9. Recusal - In case either of the parties or Counsel for the parties are related or closely known to Court Commissioner, he/she shall recuse self from the case and inform the referral Tribunal.

3.5. Remuneration of Ld. Commissioner

3.5.1. Quantum- The remuneration for the purposes of Commissioner need to be fixed by the Court. Remuneration of Ld. L.C, shall be Rs. 10,000/- one sitting per day (maximum of 3 hours), if such witness is Petitioner/Respondent/party to the petition/suit, If evidence is extended beyond 3 hours, then Rs. 2,500/- per is to be paid for each additional hour on such sitting on same day.

Remuneration of Ld. LC shall be Rs.5,000/- per witness, for any other public witness. Remuneration of Ld. LO shall be Rs.2000/-per witness, for any other /official/Formal witness.

3.5.1.1 *It is further made clear that in case the witness is present but there is a adjournment sought for any reason without advance intimation to LC and other side or such adjournment is not accommodated in advance then the cost of burden of that particular day of the commission shall be borne by respondent's side.*

3.5.2. Mode of Payment- Such remuneration shall be paid by the petitioner directly either by way of cash, cheque or draft against due receipt.

3.5.3. For this purpose, the Ld. Local Commissioner shall provide



cash receipt/his bank account / online payment details to the respondent side so that payment through electronic mode can be made by the respondent side, if so desired.

3.5.4. Cost to Parties - Each side party shall bear the cost of leading his/her own side evidence through L.C.

3.5.6. The Stenographer, infrastructure and incidental matters/issues/items can either be arranged by the Party concerned who is leading the evidence through LC at his/her own cost, or by the Ld. Commissioner.

*In case the same is arranged by Ld. Commissioner, then the cost of Stenographer, infrastructure and incidental issues/items/matters, if any, shall be reimbursed by Party concerned who is leading the evidence through LC to Ld. Commissioner @ **Rs.2,000/-** Per witness if witness is petitioner or respondent and **Rs.7,500/-** per witness for any other witness.*

3.6. Judicial Intervention during recording of evidence-

3.6.1. Parties to Cooperate- It is expected that both the sides will cooperate with Ld. Commissioner as well as each other and record evidence in a peaceful manner.

3.6.2. Dissolution of stalemate- In case of any conflicting circumstances they shall resolve issues at their own level with the active help of Ld. Commissioner.

3.6.3. Court Intervention- However, in case of any unforeseen situation requiring judicial intervention, Ld. Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediments

3.6.4. Closure of Evidence - In case a Party fails to Examine any Witness despite opportunity, the Court Commissioner or the opposite Party can request this Court to close the right of the defaulting party to lead Evidence.

3.7. Miscellaneous Applications-

3.7.1. Moving the Application- In case either of the party is desirous of moving any miscellaneous application viz, amending of pleadings, interim injunction etc. they shall share an advance copy with the opposite side and reply thereof, if any, shall be prepared within seven days.

3.7.2. Date of Hearing- Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court in with the help of the Reader of the Court and shall not wait till next date fixed for hearing. All such miscellaneous applications shall-be separately registered, numbered and indexed as an extension of main suit number.

3.7.3. Evidence not to be stalled- It is clarified that, unless Id Counsel is of the view that the application is such that evidence cannot be recorded before its disposal, the recording of PE/RE shall



continue unabatedly.

3.7.4. Ld. Counsels/or their Parties shall contact the ld. Commissioner within one week from today. Thereafter, La. commissioner shall fix the date(s) for recording evidence and intimate the parties and/or their counsels suitably, apart from finalizing the place of recording evidence in view of directions mentioned above. The reader/ahlmad of this court shall send a copy of this order to Ld LC. Commissioner through email or electronic mode/WhatsApp etc on the mobile number of the Ld. L.C.”

3. Learned counsel appearing for the Petitioner, at the outset, submits that the Petitioner is not seeking to impugn the appointment of the learned Local Commissioner. He, however, submits that, having regard to the nature and conduct of the Respondent, it would be appropriate if the evidence is recorded in the Courtroom, where the learned Presiding Judge would be available to intervene in the event any dispute or issue arises during the recording of evidence, and thereby facilitate the smooth conduct of the proceedings.

4. This Court is not convinced that such a course of action would be practicable, particularly when the learned Family Court is required to function as a regular Court and hear matters on its board. It is quite possible that repeated interventions may be required during the recording of evidence, which may, in turn, impede the learned Judge in discharging the other judicial functions of the Court.

5. This Court also notes that the Impugned Order, as extracted hereinabove, is fairly elaborate and takes into account various eventualities which may arise during the recording of evidence, including the summoning of documents, if so required.

6. This Court is, therefore, of the view that, though the submission advanced by learned counsel is forthright, the suggestion may not be practical in nature. In any event, the prayer made in the present



Petition is for setting aside the Impugned Order in its entirety.

7. The suggestion articulated before this Court can, however, always be placed before the learned Family Court in an appropriate manner, and the learned Family Court may consider the same, if so warranted, in the course of the proceedings.

8. Learned counsel for the Petitioner further submits that the aforesaid suggestion is also in line with the provisions of Order XVIII Rule 5 of the Code of Civil Procedure, 1908, which, according to him, contemplate that, where the appeal is allowed, the evidence of witnesses is to be recorded either in the presence or under the personal directions and superintendence of the Judge.

9. *Prima facie*, this Court is of the view that such an interpretation would render the provisions of Order XVIII Rule 4(2) of the CPC *otiose* and unworkable.

10. Nonetheless, these are aspects which, if raised before the learned Family Court, may be considered in appropriate proceedings.

11. The present Petition, along with all pending application(s), if any, stands disposed of.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 10, 2026/v/jk