

Prem Kumar Chhabra vs Ashok Kumar Chhabra & Ors on 16 October, 2020

Author: C. Hari Shankar

Bench: C. Hari Shankar

\$~3 (original side)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ I.A. 7386/2020 in CS (OS) 588/2018 with I.A.10048/2019

PREM KUMAR CHHABRA

..... Plaintiff

Through: Ms. Shikha Sapra and
Mr.Raghav Bhalla, Advs.

versus

ASHOK KUMAR CHHABRA & ORS.

..... Defendants

Through: Mr. Jaspreet Singh Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

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16.10.2020

(Video-Conferencing)

1. This application seeks permission for recording of the evidence of the plaintiff/applicant through virtual hearing, or by an oath commissioner.

2. The application avers that PW-1, whose evidence is required to be recorded, is suffering from prostate cancer and other heart ailments and that his health is repeatedly deteriorating. It is asserted that the Prostate Specific Antigen (PSA) reading of PW-1 has increased from 49.500 to 95.50 which is critically high. As such, the urgency of recording the evidence of PW-1, before his health deteriorates further, is emphasised.

3. It is also stated that, in fact, these proceedings have reached a stalemate at the stage of recording of evidence of PW-1, in view of the COVID-2019 pandemic and restricting functioning of Courts in the wake thereof.

4. In my opinion, the prayer in this application is justified.

5. Mr. Jaspreet Singh Kapur, learned Counsel for the defendant, fairly does not oppose the application but states that, given the COVID-2019 pandemic situation, which still prevails, it would be difficult to find a representative, to represent his client, if the evidence is to be physically

recorded at the venue where PW-1 is located. He, however, has no objection to video recording of the evidence. He draws my attention, in this context, to the fact that the Video Conferencing Rules notified by this court vide Notification No. 325/Rules/DHC dated 1st June, 2020, in fact, provide for such an arrangement. For ready reference, Rule 8 of the Video Conferencing Rules may be reproduced thus :

"8. Examination of persons 8.1 Any person being examined, including a witness shall, before being examined through video conferencing, produce and file proof of identity by submitting an identity document issued or duly recognized by the Government of India, State Government, Union Territory, or in the absence of such a document, an affidavit attested by any of the authorities referred to in Section 139 of the CPC or Section 297 of the CrPC, as the case may be. The affidavit will inter alia state that the person, who is shown to be the party to the proceedings or as a witness, is the same person, who is to depose at the virtual hearing. A copy of the proof of identity or affidavit, as the case may be, will be made available to the opposite party.

8.2 The person being examined will ordinarily be examined during the working hours of the concerned Court or at such time as the Court may deem fit. The oath will be administered to the person being examined by the Coordinator at the Court Point.

8.3 Where the person being examined, or the accused to be tried, is in custody, the statement or, as the case may be, the testimony, may be recorded through video conferencing. The Court shall provide adequate opportunity to the under-trial prisoner to consult in privacy with their counsel before, during and after the video conferencing.

8.4 Subject to the provisions for the examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgement with the Court in this behalf.

8.5 If a person is examined concerning a particular document then the summons to witness must be accompanied by a duly certified photocopy of the document. The original document should be exhibited at the Court Point as per the deposition of the concerned person being examined.

8.6 The Court would be at liberty to record the demeanour of the person being examined.

8.7 The Court will note the objections raised during the deposition of the person being examined and rule on them.

8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the following ways:

8.8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the presiding Judge at the Court Point shall be sent by the official e-mail to the Remote Point where a print out of the same will be taken and signed by the person being examined. A scanned copy of the transcript digitally signed by the Coordinator at the Remote Point would be transmitted by official email to the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.

8.8.2 If digital signatures are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-

editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.

8.9 An audio-visual recording of the examination of the person examined shall be preserved. An encrypted master copy with hash value shall be retained as a part of the record.

8.10 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect the privacy of the person examined bearing in mind aspects such as age, gender, physical condition and recognized customs and practices.

8.11 The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue.

8.12 The Court may also impose such other conditions as are necessary for a given set of facts for effective recording of the examination (especially to ensure compliance with Rule 5.6.4).

8.13 The examination shall, as far as practicable, proceed without interruption or the grant of unnecessary adjournments. However, the Court or the Commissioner as the case may be will be at liberty to determine whether an adjournment should be granted, and if so, on what terms.

8.14 The Court shall be guided by the provisions of the CPC and Chapter XXIII, Part B of the CrPC, the Evidence Act and the IT Act while examining a person through video conferencing.

8.15 Where a Required Person is not capable of reaching the Court Point or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such circumstances, the Court may direct the use of portable video conferencing systems. Authority in this behalf may be given to the concerned Coordinator and/or any person deemed fit by the Court.

8.16 Subject to such orders as the Court may pass, in case any party or person authorized by the party is desirous of being physically present at the Remote Point at the time of recording of the testimony, such a party shall make its arrangement for appearance /representation at the Remote Point."

6. "Court Point" and "Remote point" are defined in Clause (v) and

(x), of Rule 2 of the Video Conferencing Rules, thus:

"(v) "Court Point" means the Courtroom or one or more places where the Court is physically convened, or the place where a Commissioner or an inquiring officer holds proceedings under the directions of the Court.

(x) "Remote Point" is a place where any person or persons are required to be present or appear through a video link."

7. Mr. Jaspreet Singh Kapur points out that though, the Video Conferencing Rules refer to "Court Point" and "Remote Point", they do not notice the fact that there would be two more points i.e. the point where the Counsel for the defendant and the plaintiff would be located.

8. In view thereof, the prayers in the application are allowed in the following terms:

(i) The recording of the evidence, both by way of examination in chief and cross examination and if any, re-

examination of PW-1, is permitted to be conducted by video conferencing, as contemplated by Rule 8 of the Video Conferencing Rules.

(ii) The recording of the evidence of PW-1 would be conducted in the presence of Mr Alok Agarwal (9910384729), learned Additional District Judge (retd), who would be the "Commissioner" for the said purpose, within the meaning of Rule 2(ii) of the Video Conferencing Rules.

(iii) The Commissioner may preside over the recording of evidence of PW-1 from his residence, which would be treated as the "Court Point", as defined in Rule 2(v) of the Video Conferencing Rules.

(iv) PW-1 is permitted to be examined at any suitable occasion at his residence, which would, therefore, be treated as the "Remote Point", as defined in Rule 2(x) of the Video Conferencing Rules and his evidence would be recorded through a video link.

(v) Rule 5.1 of the Video Conferencing Rules requires a Coordinator to be present both at the "Court Point" and at the "Remote Point". Rule 5.3 lists the persons who may be appointed as Coordinators at the "Remote Point". Where the witness is located at his residence, Clause 5.3.10 would apply, which enables the Court to appoint any person as it deems fit and proper, who is ready and willing to render services as a Coordinator to ensure that the proceedings are conducted in a fair, impartial and independent manner. The Court requests the learned Secretary, Delhi High Court Legal Services Committee (DHCLSC) to depute two advocates, each of whom should have more than 10 years' experience to her or his credit, as Coordinators in this matter. The Coordinators would be physically present at the "Court Point" and at the "Remote Point" during the recording of the evidence, and would ensure seamless conducting of the proceedings. For this purpose, a copy of this order would be emailed, by the Registry as well as the Court Master of this Court, to the email id of the learned Secretary, DHCLSC, as soon as it is transcribed and finalized.

(vi) Additionally, learned Counsel who would be conducting the examination-in-chief/cross examination/re-examination, would be permitted to do so from locations of their choice.

(vii) Both parties would be entitled to have one authorised representative, to be present at the location of recording of evidence of PW-1. The representative would not be one of the witnesses named in the present case.

(viii) The Registry is directed to email to the learned Court Commissioner as well as the learned Counsel who would be conducting the examination-in-chief and cross examination, scanned copies of the entire court record in the present case. Additionally, the non-editable scanned copy of the record would also be provided to PW-1 by email at the email ID to be provided by learned Counsel for the plaintiff.

(ix) Mr. Jaspreet Singh Kapur submits that he may need two days to cross-examine PW-1. The exercise of examination-in- chief is not likely to take time as an affidavit in evidence has already been filed by PW-1. As such, for the present, this Court fixes 6th November, 2020 and 12th November, 2020 as the days when recording of evidence of PW-1 would be conducted in accordance with the above directives.

(x) The Court Commissioner would be entitled to a consolidated honorarium of 1 lakh and each of the Coordinators would be entitled to be paid consolidated honorarium of 75,000/-, for the above exercise. This amount would, for the present, be disbursed by the plaintiff on 6th November, 2020, subject to further orders to be passed in the Suit.

9. The exercise of recording of evidence would be conducted strictly in accordance with the provisions set out in the Video Conferencing Rules in that regard and as per the discipline and protocol prescribed in that regard in the said Rules, read with the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872, to the extent applicable.

10. Mr. Jaspreet Singh raises an objection that the affidavits of all witnesses have not been simultaneously filed as required by law. The objection is noted, but I am not inclined to pass any orders thereon as it is not necessary for the purpose of deciding the present application. The merits of this objection, as well as the defence thereto, are left open to be decided at an appropriate stage.

11. The application is disposed of.

12. Needless to say, both parties are at liberty to move this Court for additional direction towards effective implementation of the above directives should they deem it necessary at any point of time.

This application will be taken up alongwith the suit.

C. HARI SHANKAR, J OCTOBER 16, 2020/kr