

CHAPTER X Commissions

Commission to Examine Witnesses

1. (a) Applications for issuance of commissions to examine witness shall be made by the parties within 30 days from the date of the settlement of issues and shall be supported by an affidavit disclosing the nature of the evidence each of the witness is expected to give. If the witnesses are sought to be examined on interrogatories, the interrogatories will be submitted along with the application. Copies of such application, affidavit and interrogatories shall be served on the opposite party.

(b) No application for the issuance of such commission shall be entertained after the suit or matter has been set down for trial unless the Court is satisfied that application could not have been made earlier, and in that event the Court may make such order as to costs or otherwise as it deems fit.

2. (a) If the opposite party objects to the issuance of the commission, he shall file a reply supported by an affidavit, if necessary within 10 days of the service on him of the aforesaid documents. The application with the reply, if any, shall thereupon be placed before the Court for orders.

(b) If the application is allowed and the order be for the examination of the witnesses on interrogatories, the opposite party shall file cross-interrogatories within 10 days of the date of the order and serve copies thereof on the other party, who shall within 7 days thereafter file reinterrogatories, if any. The matter will then be placed before the Court for final orders and the objections, if any, to the cross-interrogatories and re-interrogatories will be disposed of.

3. Final hearing may be fixed after return of commission—If the application referred to in Rule 1 or 2 is granted, the matter may not be set down for final disposal before the return of the commission, except by order of the Court.

COMMENTS

Practice direction of Delhi High Court, requiring defendant to examine his witnesses on Commission before examination of plaintiff's witnesses does not alter rules of evidence in Evidence Act and Order 18, Rules 1 & 2 of C.P.C. *Kishan Lal Gupta v. M/s. Dujodwala Industries*, AIR 1977 Delhi 49.

Rules 1 and 3 of Delhi High Court (Original Side) Rules are in keeping with the concept of continuous trial. These are not inconsistent with Evidence Act Sections 101 to 103 and are not *ultra vires*. These sections relate to burden of proof which is not in any manner affected by the Rules. *Kishan Lal Gupta v. Dujodwala Industries*, AIR 1977 Delhi 49.

4. Preparation etc. of Commission—Commission shall be prepared by the Registrar who shall seal the same and annex thereto the interrogatories, cross-interrogatories, re-interrogatories and

documents, if any, and shall enclose it (with directions that the same be returned to him when executed) in a sealed envelope.

COMMENTS

Delhi High Court (Original Side) Rules 1967 Chapter X is substituted for Order 37 of C.P.C. Under Order 37, Rule 3 the emphasis is that the Court must find whether the proposed defence raises triable issues or not. In case where triable issues arise, leave should ordinarily be given unconditionally to defend the suit, ILR (1973) 1 Delhi 123.

In a suit on promissory note, where the defendant in his defence by affidavits did not make it incumbent on the holder of the promote to prove consideration, grant of conditional leave by the trial Court under Rule 4 was upheld, ILR (1973) 1 Delhi 123.

5. Commissions within local limits—Commissions for examination of a person within the local limits of the Court shall be executed by a Commissioner appointed by the Court.

6. Examination *de bene esse*—Commissions for examination of witness *de bene esse* may be issued at any time notwithstanding any thing hereinbefore contained in cases where it is not possible for the examination to be conducted by the Court.

7. Return of Commission—(a) Every order for the issue of a commission of Letter of Request may appoint a date allowing sufficient time for its execution and return.

(b) If the Commissioner is unable to return the commission duly executed within the time fixed by the Court, the Court may extend the time or cancel the commission and may appoint another commissioner in his place.

8. Deposition to be read over to and signed by the witness—The evidence shall be recorded as far as possible in the narrative and in the language in which it is given by the witness; where it is not possible to do so, it may be recorded in English. After taking down the deposition of any witness but before obtaining his signature thereon, it shall be distinctly read over and, when necessary, interpreted to the witnesses and thereafter left with the Commissioner who shall subscribe his name and date of the examination.

Commissions for Accounts etc.

9. Commissioner for taking accounts etc.—The Court may appoint a suitable person as Commissioner for taking accounts, making local investigations and effecting partition of immovable property.

10. Registrar to send necessary proceedings to Commissioner—The Registrar shall furnish the Commissioner with such part of the proceedings as may be necessary.

11. Commission for taking accounts how executed—(a) The Commissioner shall fix the period within which the statements of accounts and objections thereto are to be filed by the parties concerned.

(b) The statement of account shall be in the form of a debtor and creditor account and shall be verified by the party concerned or his agent.

The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(c) The statement of objections shall specify the items to which objections are taken by reference to their numbers in the statement of account.

(d) The statement and objections shall also state (i) the grounds of each objection, and (ii) the balance, if any, admitted or claimed to be due: and it shall be verified by the affidavit of the party concerned or his agent.

(e) If any party fails to file his statement of account or objections within the period allowed, the Commissioner shall report the fact to the Court.

(f) When the case before him is ready for hearing, the Commissioner shall, after reading the statements filed before him and after examining the parties, if necessary, ascertain the points on which the parties are at issue and require them to produce their oral and documentary evidence on such points.

(g) After the evidence has been duly taken and the parties have been heard, the Commissioner shall submit his report together with the entire record and a statement in the form of dairy of the proceedings before him. The report shall state:

(i) The contested items allowed or disallowed by the Commissioner;

(ii) The reasons for allowing or disallowing the above;

(iii) The amount found due ;

(iv) The name of the party to whom it is due ; and

(v) The name of the party by whom it is due.

12. Deposit of Commission fees—(a) The Commissioner shall be paid such fees and in such manner as may be ordered by the Court.

(b) The Court or the Registrar, as the case may be, may order that such amount as it or he considers proper, be deposited in Court in advance towards the Commissioner's fees, together

with the costs of issue of the commission, within seven days of the grant of the commission or letter of Request or within such further time as may be allowed. In default, the matter shall, unless otherwise ordered for reasons recorded in writing, be set down for final disposal in due course.

(c) If at any subsequent time the Court is satisfied that the deposit made under sub-rule (b) is not sufficient to cover the remuneration of the Commissioner, if may, after notice to the parties or their Advocates, order that such further amount as it considers proper be deposited in Court within seven days from the date of such order or within such further time as the Court may allow. In default, the procedure prescribed in sub-rule (b) shall be followed.

13. Notice of filing of report; Filing objections thereto—(a) On receipt of the report of the commissioner other than the report forwarding the deposition of a witness recorded by him, the Registrar shall give notice to the parties to the suit or matter of the filing of the report.

(b) Any party desiring such report to be set aside or varied shall, unless the Registrar, otherwise directs, within ten days from the date of the service of such notice on him, file his objections thereto that serve a copy of the same on the other parties to the suit or matter. After the objections have been filed as aforesaid, the suit shall be set down for hearing of such objections. If any party after having filed objections/ abandons or does not proceed with them, any other party in the same interest shall be at liberty to proceed with such objections.

14. Notwithstanding anything contained in this Chapter Commissions and letters of Request for examination of witnesses in foreign countries will be governed by the directions issued by the appropriate authorities from time to time.