IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110 **Civil Revision No.5936 of 2015 (O & M)**
Date of Decision:11.09.2015

Jagdish Singh ....petitioner

Versus

Digambar Jain .....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Kanwardeep Singh, Advocate
for the petitioner

***

ARUN PALLI, J.(ORAL):-

Vide order being assailed dated 28.05.2015 rendered by Civil Judge (Jr.Divn.), Karnal, application moved by the petitioner for appointment of a Local Commissioner has since been declined. The conclusion arrived at in this regard reads as thus:

> ***"By way of this application, the applicant wants to get a Local Commissioner appointed to verify the facts whether the main gate of the temple exists towards the Northern side of the suit land and also to verify whether there are two other passages left by the temple at the time of raising a new construction or not. However, bare perusal of the plaint, it is clear that petitioner/respondent is seeking ejection of the applicant-respondent on the ground of personal necessity maintaining that the rasta at the Western side is not void enough for the proper ingress and outgress of the general***

NEENU VERMA
2015.09.11 15:30
I attest to the accuracy and
integrity of this document

public. The facts which the applicant wants to be verified by the local commissioner are the defence of the applicant-respondent. It is settled law that local commissioner cannot be appointed to adduce evidence on behalf of either party. The ground of personal necessity is to be proved by plaintiff and to be defended by the respondent by adducing cogent evidence on their own. Appointing the local commissioner in such matter will amount to adduce evidence on behalf of the parties. Therefore, the present application is not maintainable and the same is hereby dismissed."

Apparently, the purpose for which the petitioner prayed for appointment of a Local Commissioner was/is to procure evidence to substantiate his plea that the alleged need of the respondent-landlord is not true and conceived in good faith. Something, which otherwise, is required to be proved by leading cogent evidence. Provisions of Order 26 Rule 9 of CPC cannot be resorted to for this purpose. Ex facie, the said provision is clear, concise and incapable of any misconstruction, as it is only when the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court itself can invoke the said provisions.

That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The petition being devoid of merit is accordingly dismissed.

11.09.2015 **(ARUN PALLI)**
JUDGE

neenu

NEENU VERMA
2015.09.11 15:30
I attest to the accuracy and
integrity of this document