

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.1100 of 2016
Date of decision:01.12.2016

Hari Mohan

... Petitioner

Vs.

Satish and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Mr. J.S.Rana, Advocate representing Mr. Vinod S.Bhardwaj, Advocate, who had put in appearance on behalf of respondents No.1 to 6, on 12.04.2016 submits that he did not have any instructions, therefore, in this aspect of the matter, he did not put in appearance on the last date of hearing, i.e., on 25.10.2016.

Once the respondents have already been served and they are aware of the proceedings pending in the Court, therefore, I do not intend to send notice again to the respondents.

The grievance of the petitioner in the present revision petition is against the impugned order dated 05.01.2016, whereby, an application for grant of permission for inspection of suit property by Building Expert to determine the age of the construction only in a suit filed by the plaintiff for possession by way of demolition, has erroneously been dismissed.

Mr. Ajay Jain, learned counsel for the petitioner-plaintiff submits that the suit is slated for plaintiff's evidence in order to ascertain the aforementioned fact, the application moved is essential and necessary for adjudication of the lis.

In support of his contention, relies upon the ratio decidendi culled out by this Court in *Shri Behari Lal Charitable Trust vs. Shiv Batra and another* 2010(4) RCR (Civil) 81 and *Government Senior Secondary School, Kherki Daula, Tehsil Sohna, District Gurgaon vs. Lilu Ram and others* 2013(1) RCR (Civil) 520. He, thus, submits that the order under challenge is not sustainable in the eyes of law.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that the order under challenge is not sustainable and liable to be set aside. In such type of suit, the claim noticed above, seeking assistance of the Local Commissioner is required to determine the age of the construction as the plaintiff is seeking possession of the property, for, owing to the construction area of the chowk has been reduced as contention of the plaintiff in the suit is that construction is one year old which is disputed by the defendant. It is in this background of the matter, the plaintiff has moved the application.

I am also fortified to the ratio decidendi culled out by this Court in the aforementioned judgments, thus, the same does not applicable to the facts and circumstances of the present case as the Local Commissioner would not be a competent person, it would be an approved valuer/building

expert.

For the reasons aforementioned, the impugned order is set aside. Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

December 01, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No