

**117 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-3845-2016 (O&M)
DATE OF DECISION: 30.5.2016**

KRISHNA SAINI

.... Petitioner

VS.

CHANDI RAM AND OTHERS

.... Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vivek Goyal, Advocate
for the petitioner.

LISA GILL, J. (ORAL)

This revision petition is addressed against the order dated 11.5.2016 passed by Civil Judge (Junior Division), Kurukshetra, whereby the petitioner's application for appointment of Local Commissioner in proceedings under Order 39 Rule 2-A CPC read with Section 151 CPC, has been declined.

It is submitted that respondents have taken a specific stand in their reply under Order 39 Rule 2-A CPC that they are not interfering in the construction being raised by the petitioner and neither shall they interfere in the construction work carried out by the petitioner in future. It is further averred in para 2 of the reply that no construction work as alleged, is going on.

It is contended that the petitioner had placed on record the photographs, Annexure P-12 with this petition, before the learned trial Court to negate the averment and an application for appointment of Local Commissioner to demarcate the suit property was preferred by her, so that the petitioner may complete her construction work i.e. boundary wall, peacefully. Petitioner moved an application for providing police help for implementation of the order dated 16.5.2015 wherein the defendant-respondents were restrained from interfering in the construction work carried out by the petitioner over the suit property. The said application was dismissed on 08.12.2015 and Civil Revision No.419 of 2016 challenging the said order, was also disposed of by this Court on 29.2.2016, annexed as Annexure P9 with this petition, with a direction to the Civil Judge (Junior Division) to dispose of the application filed by the petitioner under Order 39 Rule 2A CPC within three months from the date of receipt of copy of the order.

Petitioner's application for appointment of Local Commissioner has been dismissed vide the impugned order dated 11.5.2016 while observing that spot has already been demarcated three times by appointment of different Local Commissioner's under orders of the Court and holding that the question involved is whether the respondents have violated order dated 16.5.2015, therefore, there is no necessity for appointment of a Local Commissioner in this case.

Having heard learned counsel for the petitioner and going through the file, it is apparent that demarcation of the property for the fourth time by the Local Commissioner would be an exercise in futility and is not relevant in deciding the matter under Order 39 Rule 2-A CPC.

Petitioner is always at liberty to lead evidence to prove violation of order dated 16.5.2015 and the learned trial Court would necessarily look into the evidence led by the petitioner as well as the respondent before arriving at any conclusion either in favour of or against the petitioner.

Consequently, I do not find any illegality or infirmity in the impugned order dated 11.05.2016 passed by the Civil Judge (Junior Division), Kurukshetra, to invite interference by this Court in revisional jurisdiction.

(LISA GILL)
JUDGE

30.05.2016
SwarnjitS