

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

**Civil Revision No.5977 of 2016 (O&M)
Date of Decision:14.9.2016**

Punjab National Bank

.....Petitioner

Vs

**M/s Punjab Agro Food Grain
Corpn.Ltd. and others**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Arvind Rajotia, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

1. Petitioner has assailed order dated 10.8.2016 passed by Civil Judge (Jr. Divn.) Batala, whereby application for appointment of Local Commissioner has been rejected.

2. Plaintiff filed a suit for declaration in respect of hypothecated stocks of Bardana with a consequential relief of permanent injunction seeking to restrain defendants No.1 and 2 from opening E-Tenders in respect of paddy and other items as shown in the advertisement dated 5.6.2016.

3. Plaintiff-petitioner moved an application for appointment of Local Commissioner to inspect the spot and to report about the existence of stocks of paddy and rice contained in gunny bags having the stamp of Punjab Agro Food Corporation Limited 2015-16. Petitioner claimed that the dispute relates to ownership of stock of paddy, rice and bardana lying in the business premises of M/s Shiva Food Industries, Batala Road, Qadian. Plaintiff-petitioner claims the stock to be hypothecated items with the plaintiff. However, claim of the defendants is otherwise. In order to ascertain belongingness of the stock, appointment of Local Commissioner was felt necessary so that he may visit the spot and report regarding existing stocks of rice, paddy and bardana lying in the business premises of M/s Shiva Food Industries.

4. The application was contested by defendants No.1 and 2 and vide the same order dated 10.8.2016, in which prayer under Order 39 Rules 1 and 2 CPC was declined, the prayer for appointment of Local Commissioner was also declined.

5. It is a settled principle of law that process of the Court cannot be utilised to collect evidence in favour of either of the parties to litigation. The order declining to appoint Local Commissioner has not decided substantive rights of the parties and, therefore, revision against the same is not maintainable.

6. In Harvinder Kaur and another vs. Godha Ram and

another, 1979 AIR (Punjab) 76, the Division Bench of this Court ruled that an order passed during the course of the suit proceedings would be revisable only when it determines or adjudicates some right or obligation of the parties in controversy. A revision would lie against an interlocutory order only, if it determines or adjudicates some right or obligation of the parties in controversy. Even after satisfaction of the aforesaid test, the power of revision would be exercisable by the Court subject to limitations put under sub-Section (1) and the proviso to Section 115 CPC. After deliberating upon the issue, the Division Bench of this Court held no revision would lie against an order passed under Order 26 Rule 9 CPC and the view taken in **M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** was reiterated.

7. The aforesaid view was again reiterated in another Division Bench judgment of this Court in **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418**. It was held in the said ruling that order refusing to appoint Local Commissioner does not decide any issue, nor adjudicates rights of parties for purpose of suit and, therefore, not revisable. Refusing to appoint Local Commissioner has nothing to do with the rights of the parties. It is the discretion of the Court and, if such discretion is refused, not right of the parties prejudiced and revision is not

competent against such an order.

8. In **Sumer Chand Jain vs. Vishnu Bhagwan Mangla** **2006(2) RCR (Civil) 445**, this Court while interpreting the earlier precedents held that the revision petition was not maintainable under Section 115 CPC, then by mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. Such an order cannot be interfered with even under Article 227 of the Constitution of India. The reposition held in **Hari Om vs. Minish Kumar**, **2005(2) PLR 690** was reiterated to hold that by mere change in the headnote of the petition the subject matter cannot be allowed to be wriggled out from the rigor of the law, which is otherwise well settled in view of consistent view of the Court.

9. In **Balbir Kaur and others vs. Pushpa Widge and others**, **2006(2) RCR (Civil) 318** similar view was taken by this Court by holding that revision petition under Article 227 of the Constitution of India is not maintainable against an order refusing to appoint Local Commissioner.

10. In **Rajiv Kumar Batra vs. Kashmiri Lal Sika**, **2010 (6) RCR (Civil) 37**, similar view was taken on the basis of consistent views taken by this Court in the previous precedents. Similarly in **Rambir Singh vs. Gram Panchayat, Narhera and others**, **2012(1) PLR 429**, it was held that revision petition under Article 227 of the Constitution of India and under Section 115 CPC against the order dismissing the application for

appointment of Local Commissioner is not maintainable.

11. In view of aforesaid, this Court does not find any illegality in the impugned order, therefore this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

September 14, 2016
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Whether Reasoned/Speaking Yes/No
Whether Reportable Yes/No