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

**CR-8785-2015**

**Date of Decision : January 7<sup>th</sup>, 2016**

Suresh Kumar

.... Petitioner

Versus

Kailash Goyal and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

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

Present Mr. Manish Kumar Singla, Advocate,  
for the petitioner.

Ms. Puja Chopra, Advocate,  
for the respondents.

**SHEKHER DHAWAN, J.**

Present revision petition under Article 227 of the Constitution of India by Suresh Kumar, plaintiff-petitioner for setting aside order dated 30.11.2015 passed by Civil Judge [Junior Division], Samana.

Learned counsel for the petitioner submitted that vide order dated 30.11.2015, application filed by the plaintiff for giving directions to the defendants-respondents and allow Building Expert, Patiala to visit the spot for complete inspection of the suit property under possession of the defendants for the purpose of expert opinion was dismissed by the Court below.

Learned counsel for the petitioner submitted that earlier similar

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application was filed in a suit titled **Kailash Goyal and others Vs. Suresh Kumar and other** and the same was allowed by Civil Judge [Junior Division], Samana vide order dated 21.4.2014. He further submitted that as the property is being damaged by the respondents, a prayer was made for allowing the visit of Building Expert with his inspection tools and Photographer to enter the first floor and terrace of the ground floor of the building as well as shops of the house including its terrace with the purpose of complete inspection, but the Court below wrongly held that the plaintiffs want to shift their burden of proving the damage if any, upon the other party. Learned counsel for the petitioner further submitted that the fact whether any damage has been caused to the building or not can be proved only by inspection of the property by Building Expert and that was possible only if the Building Expert was allowed to inspect the premises. This was not a case of creating any evidence for the parties. So, the impugned order be set-aside and the application be accepted.

Learned counsel for the respondents submitted that renovation work was earlier done by the plaintiff in July/August, 2010 in violation of Court orders. More so, family of the defendants including small children are residing on the first floor. So, the application was rightly dismissed by the Court below.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the Court below has not appreciated the controversy in its real perspective. Vide application filed by the petitioner, necessary permission was sought so as to allow the Building Expert to visit and inspect the premises. It was for the Court to

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decide the said controversy by imposing certain conditions regarding visit of the Expert. It was not a case of shifting of burden of proof to the other party regarding damage having been caused by the defendants. The onus shall certainly be upon the plaintiffs to prove their case that the property has actually been damaged. But the plaintiff is left with no other option, but to prove the same by the visit of Expert on the spot and this permission has been erroneously declined by the Court below.

In view of the above, the present revision petition is accepted and the order dated 30.11.2015 passed by Civil Judge [Junior Division], Samana is set-aside and the application [Annexure P/4] of the petitioner is allowed thereby giving direction to the defendants-respondents to allow Er. S.K. Malhotra, Building Expert, Patiala alongwith inspection tools and accompanied by a Photographer to enter the first floor and terrace of ground floor of the building as well as the first floor of the construction over the disputed shops of the house including its terrace as well as adjoining backside house to inspect the backside wall of shops from inside the house. However, the Building Expert shall visit the spot for inspection purpose during the period from 9.00 AM to 5.00 PM and after giving due notice to the opposite-parties.

The revision petition is disposed of in the above terms.

**(SHEKHER DHAWAN)**  
**JUDGE**

**January 7<sup>th</sup>, 2016**  
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