

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

Civil Revision No. 1349 of 2017

Date of decision:- March 01, 2017

CHETAN KALIA

....PETITIONER..

VERSUS

KASHMIRI LAL AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Jai Bhagwan, Advocate,
for the petitioner.

JASPAL SINGH, J.

Challenge in the instant revision petition preferred under Article 227 of the Constitution of India is to the order dated 01.12.2016 (Annexure P-3) passed by Additional Civil Judge (Junior Division), Phagwara whereby an application filed by the petitioner under Order XXVI Rule 9 of the Code of Civil Procedure (for brevity, "CPC" only) for appointment of Local Commissioner has been dismissed.

2. The contention of learned counsel for the petitioner is that during the pendency of execution proceedings, the petitioner filed objections with a plea that warrants of possession have been issued for delivering the possession over the property after removal of machinery and other goods like raw-material, finished, unfinished, other paraphernalia and personal belonging etc. from the premises comprising factory and residential portion from the building. He further stated that petitioner-objector was not arrayed as a party therein though it was in the knowledge

of respondent-decree holder that petitioner is in occupation and in possession of the premises much prior to the filing of the suit for possession by the respondent-decree holder. In order to determine the actual and factual position of the site and that petitioner is running business in the suit property under the name & style of M/s K.K. Engineer since April, 2005, the appointment of Local Commissioner is essential. Thus, the impugned order declining the appointment of Local Commissioner is against the basic principles governing the appointment of Local Commissioner.

3. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but find the same to be of without any legal and factual weight.

4. Firstly, it would be appropriate to mention here that the instant revision petition is not maintainable. By now, it is well settled proposition of law that against the order of refusing the appointment of local commissioner, no revision either under Section 115 CPC or under Article 227 of the Constitution of India is maintainable. To fortify this observation, we can have the reference of the judgments delivered in cases captioned as ***“Harvinder Kaur and another vs. Godha Ram and another”***1979 AIR (Punjab) 76, ***“Pritam Singh and another vs. Sunder Lal and ors”*** 1990(2) PLR 191 and ***“Sham Lal vs. Sumitra Devi, 2016(3) PLR 324”***.

6. Even otherwise, it is also equally settled that no Local Commissioner can be appointed to assist a party to collect evidence to establish its case. In the instant case also, the petitioner's intention is to collect the evidence through local commissioner, which is not permissible.

7. Thus, this Court is of the considered view that application for appointment of Local Commissioner has rightly been declined by ld. trial

court. There is no infirmity or illegality in the impugned order dated 01.12.2016 (Annexure P-3), which is otherwise absolutely inconsonance with the settled canons of law.

8. Dismissed.

March 01, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No