

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1712 of 2017 (O&M)

Date of decision: 09.03.2017

Lalit Kumar and another

... Petitioners

versus

Ashok Kumar Jain and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Ajay Jain, Advocate for the petitioners.

G.S. SANDHAWALIA, J. (ORAL)

The present revision is directed against the order dated 21.02.2017 (Annexure-P2) passed by the Civil Judge exercising the powers of Rent Controller whereby the application of the tenant for sending the Commission to the Civil Court at Thane, Mumbai, (Maharashtra) for obtaining the Income Tax Returns has been dismissed.

The reasoning given by the Court is that the income tax return can be tendered by obtaining from the Office of Income Tax through RTI or by calling witnesses orally at their own expenses in the Court and no basis for sending a local commission has been made out.

Counsel for the petitioner vehemently argued that under the provisions of Order 16 Rule 19 CPC a witness cannot be compelled to come to the Court who is residing beyond the stipulated distance. He further submitted that under Order 26 Rule 4 CPC the court has a power

to issue a commission for the examination of a person who cannot be compelled to attend.

The argument raised is not liable to be considered. Proviso under Order 16 Rule 19 CPC provides that a person can be ordered to attend a Court in person to give evidence where transport by air is available. Similarly, a commission shall be issued for his examination if his evidence is considered necessary and when it cannot be ordered to attend court in person in view of Rule 19 of Order 16. Even otherwise the court was well justified in coming to the conclusion that relevant record could be summoned by paying the necessary expenses and calling for the said officials along with their record. It would be more appropriate that the officials be called otherwise the expenses would be doubled as they will have to pay to the lawyer also to go to Mumbai to examine the said witness.

Resultantly, the reasons given by the Court below are well justified and no grounds are made out to interfere with the order.

The petition is dismissed, in *limine*.

(G.S. SANDHAWALIA)
JUDGE

09.03.2017

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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No