

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

C.R. No. 3128 of 2015
Date of decision:02.02.2017

Smt. Raksha Devi

....Petitioner(s)

Versus

Madan Lal and others

...Respondent(s)

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

Present: Mr. Sushil Saini, Advocate,
for the petitioner.

None for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The challenge in the present revision petition by the tenant is to the non-appointment of the Local Commissioner for visiting the premises in question for the purpose that the shop had not remained unoccupied for 4 months which was the ground of eviction by the landlords under the East Punjab Urban Rent Restriction Act, 1949. The Rent Controller has held that the case was fixed for the petitioner's-tenant's evidence since 11.09.2013 and last opportunity was granted on 12.03.2014 but evidence had not been concluded. The application had been filed at the fag end of the trial and it was the duty of the tenants to lead sufficient evidence to prove their case and the collection of evidence could not be asked through appointment of Local Commissioner. Resultantly, the application was dismissed vide the impugned order dated 08.04.2015 (Annexure P-2).

Admittedly, it is settled principle that a revision as such against declining of appointment of Local Commissioner is not maintainable.

Reference can be made to a Division Bench judgment of this Court in ***Pritam Singh and another vs. Sunder Lal and others, 1990 (2) PLR 191.***

The relevant para read as under:-

“6. After going through the Judgments cited in the reference order, we do not find that the earlier Judgment in Harvinder Kaur's case (supra) requires any re consideration. The order refusing to appoint a local commissioner does not decide any issue, nor adjudicates rights of the parties for the purpose of the suit and is, therefore, not revisable. The distinction sought to be made by the learned Single Judge in view of the Judgment in M/s Sadhu Ram Bali Ram's case (supra) was clearly noticed by the Division Bench in Harvinder Kaur's case (supra) and it was observed : --

"It may be observed that the facts of M/s Sadhu Ram Bali Ram's case were different as in that case the onus of an issue had been wrongly placed and while deciding that question, it was held that such an order would be revisable."

Apart from that, placing the onus of an issue has something to do with the rights of the parties whereas refusing to appoint a Commission under Order 26, Rule 9, Code of Civil Procedure, has nothing to do with the rights of the parties as such. It is the discretion of the Court to appoint a Commission there under and if the Court refuses to appoint a Commission, then no right of any party can be said to be prejudiced as such. ”

Even otherwise, the cause of action as such is to the landlord at the time of filing of the ejectment petition i.e. 16.11.2009 at that point of time and an application which was filed after 6 years would not help the Rent Controller in deciding the issue in any manner.

Resultantly, keeping in view the above, the present revision
petition is dismissed.

02.02.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No