

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

CR No.3053 of 2017.

Date of Decision: 01.05.2017.

Jora Singh

....Petitioner.

VERSUS

Sunita Devi

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Amit Jain, Advocate for the petitioner.

SNEH PRASHAR, J.

Challenge in this revision petition is to the order dated 05.04.2017 passed by learned Additional Civil Judge (Senior Division), Hisar dismissing the application filed by the petitioner to allow him and his building expert/ civil engineer to enter the property in question for preparing valuation report of the said property.

The submissions made by Mr. Amit Jain, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that during his evidence, the respondent-defendant has examined the building expert/ civil engineer in order to prove the value of the property in question in respect of which an agreement to sell dated 22.05.2013 had been executed between the parties. It is to rebut that evidence, the petitioner also wants to examine building expert/ civil engineer to prove the value of the property. Learned

trial Court has wrongly assumed that the report given by the building

expert/ civil engineer examined by respondent and cross examined by the petitioner is correct and accurate. In fact, if at all, a building expert/ civil engineer was required to elucidate the value of the property or factual position at the spot, learned trial Court itself could have appointed an appropriate local commission. Learned trial Court had not considered the prayer made by the petitioner in right perspective and therefore, the impugned order is liable to be set aside. To support his argument, learned counsel relied upon **Board of Trustees of Martyrs Memorial Trust and another vs. Union of India and others., (2012) 10 SCC.**

The argument of learned counsel for the petitioner is devoid of merit. The facts in hand are completely distinguishable from the facts of **Board of Trustees of Martyrs Memorial Trust and another'** case (supra). It is not a case where learned trial Court had not applied its mind or has failed to give clear reasoning and focused consideration on the matter in issue. The reasons given by learned trial Court for dismissing the application of the petitioner are as under:-

“The application in hand apparently seems to be an attempt on part of the applicant to collect evidence. There is already a report of Local Commission regarding the suit property. Said Local Commission has been examined as DW-7 in the present case. The applicant has already cross-examined the said witness. Certainly, once the witness has been cross examined, it has to be presumed that the party satisfied with their cross-examination. Moving of this application, at this juncture, is certainly an attempt to fill up the lacuna as well as to procure the evidence by using the court as an agency.”

The suit filed by the petitioner is for possession by way of specific performance of the agreement to sell. Merely because the defendant has examined the building expert/civil engineer, is no reason to allow the petitioner alongwith his valuer to enter the house of the respondent for preparing the valuation report. If at all, the respondent has examined a building valuer, the petitioner has already cross examined him. The petitioner has already led his evidence and it is not in his affirmative case that there is any issue on which leading evidence in rebuttal he has to examine a building valuer. Learned counsel for the petitioner has failed to demonstrate any illegality or perversity warranting interference in the order of learned trial Court. Thus, the petition being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

01.05.2017.
jitender sharma(r)

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**