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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.420 of 2016 (O&M)
Date of Decision: 11.07.2017

GURNAM SINGH

.....Petitioner

Vs

DAYAL SINGH & ORS

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.K. Garg Advocate
for the petitioners.

Mr. M.S. Saini, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. The present revision petition has been preferred by the petitioner against the order dated 04.01.2016 passed by the Civil Judge (Sr. Divn.) Moga vide which application for appointment of Local Commissioner was dismissed.

[2]. Learned counsel for the petitioner relied upon **Sri Subhas Mandal and anr. vs. Sri Monoranjan Samanta and Anr., 2015(4) WBLR 268; Shanu Baheti vs. Municipal Council, Pali and Anr., 2012(1) DNJ 364 and Sarala Jain and others vs. Sangu Gangadhar and others, 2016(3) Andh LD 197** and contended that interference in the revision petition

against the order declining the appointment of Local Commissioner falls within the ambit of Article 227 of the Constitution of India for which discretion can be exercised.

[3]. I have learned counsel for the parties.

[4]. It is a settled position that no party can be allowed to take recourse to the process of the Court for collecting evidence. The order rejecting prayer for appointment of Local Commissioner is not revisable in view of ratio of law laid down in **Harvinder Kaur and another vs. Godha Ram and another, 1979 AIR (Punjab) 76; M/s Mohinder Kumar Rajinder Parkash Dalmir Singh alias Dalmira and Mangal Singh and another vs. Piara Lal, 1971 PLR 531** and **Pritam Singh and anr. vs. Sunder Lal and Ors., 1990 PLJ 418.**

[5]. The order refusing to appoint Local Commissioner does not decide any issue on merit inasmuch as that no right of the either party is adjudicated by such order for the purpose of the suit and, therefore, such order is held to be not revisable. Refusal to appoint Local Commissioner is nothing to do with the rights of the parties. It is squarely covered under the discretion of the Court and in case such discretion is refused, no right of the party is prejudiced, therefore, revision is incompetent against such order.

[6]. In **Sumer Chand Jain vs. Vishnu Bhagwan Mangla**

2006(2) RCR (Civil) 445, this Court while interpreting the earlier precedents held that the revision petition was not maintainable under Section 115 CPC, then by mere change in the headnote of the petition, the substance cannot be replaced to wriggle out from the rigors of law. Such an order cannot be interfered with even under Article 227 of the Constitution of India. The view expressed in *Hari Om vs. Minish Kumar, 2005(2) PLR 690* was reiterated to hold that by mere change in the headnote of the petition the subject matter cannot be allowed to be wriggled out from the rigor of the law, which is otherwise well settled in view of consistent view of precedents on the subject matter.

[7]. The aforesaid view was also reiterated in *Balbir Kaur and others vs. Pushpa Widge and others, 2006(2) RCR (Civil) 318; Rajiv Kumar Batra vs. Kashmiri Lal Sika, 2010(6) RCR (Civil) 37* and *Rambir Singh vs. Gram Panchayat, Narhera and others, 2012(1) PLR 429*.

[8]. In *Sri Subhas Mandal and anr.'s* (supra) the facts involved were to the effect that the third party, who was instrumental in raising wall was sought to be impleaded on the basis of report of the Local Commissioner. Supervisory jurisdiction was exercised, when the Subordinate Court had failed to exercise jurisdiction conferred upon it. It is not a case

that the trial Court has no power to appoint Local Commissioner in view of facts and circumstances of the case. The issue is that once the trial Court has exercised its jurisdiction to find that the case is not worth consideration for an appointment of a Local Commissioner, then in such eventuality, revision petition under Section 115 CPC and under Article 227 of the Constitution of India is not maintainable.

[9]. The exercise of jurisdiction under Article 227 of the Constitution of India is dependent upon the error of jurisdiction exercised by the trial Court or failure of jurisdiction so vested in it. It is a case of proper exercise of jurisdiction by the trial Court, based on precedents on the issue. Once the jurisdiction has been exercised against the petitioner, then it does not lie to the mouth of the petitioner that in the light of some precedents of different High Courts, the jurisdiction has not been properly exercised.

[10]. It is also settled proposition that if two views are possible, then the view preferred by the trial Court should prevail. Even otherwise, this Court is of the opinion that there is no error of jurisdiction or patent illegality in the impugned order. The revision petition is accordingly dismissed.

July 11, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No