

CR No. 4329 of 2016
DECIDED ON: APRIL 06, 2017

.....PETITIONER

PRINCIPAL, ARMY SCHOOL, FAZILKA & OTHERS

....RESPONDENTS

Present: Mr. Sandeep Khunger, Advocate
for the petitioner.

Mr. Kuldip Sanwal, Advocate
for respondents No.1 and 2.

Service upon respondents No.3 to 7 is dispensed with
(Vide order dated 05.09.2016).

JASPAL SINGH, J

Challenge in this revision petition preferred under Article 227 of the Constitution of India is to the order dated May 24, 2016 passed by learned Additional Civil Judge (Sr. Division), Fazilka, whereby, an application moved by the petitioner for the issuance of direction to the respondents to comply with the Clause No. 24 of the Tender Notice by way of appointment of some Architect/Senior Engineer of the MES for the final checking of the work done by the petitioner in the presence of the petitioner or in the alternative for

appointment of a Local Commissioner i.e. qualified Engineer, who may visit the spot in the presence of both the parties and measure the work done by the petitioner; has been dismissed.

While assailing the impugned order it has been ebulliently argued by learned counsel for the petitioner that the same is absolutely against the settled canons of law and the application filed by the petitioner has been dismissed by learned trial Court vide impugned order by holding that the petitioner has moved the afore-said application just because that petitioner was asked in cross-examination that the bill was never verified by the school and the position cannot be reverted back to the stage before filing of the suit so as to collect the material for supporting the claim of recovery. In fact, learned trial Court has failed to appreciate that according to Clause 24 of the tender notice running payment shall be released after verification of all running bill and final by the Architects and final checking of the work done. According to Clause 6 of the agreement, the final payment was to be made after checking by the Architect and final checking of the work by the Board of Officers. The Architect was appointed by the respondents and not by the petitioner and the Board of Officers is also the officials of the respondents, therefore, the verification of the work done was required to be done by the respondents and it was not the responsibility of the petitioner.

Moreover, the application was moved by the petitioner in order to overcome any difficulty, which the court may fact at the time of final adjudication of the controversy to the effect that the work done by the petitioner has not been verified by the respondents. Moreover, the appointment of Local Commissioner or the direction to be given to the Architect to visit the spot

fortified the facts with regard to the verification of the bills, cannot be termed to be for the collection of evidence in support of the claim of the petitioner. Rather, it would help the trial Court to clinch the matter in a proper and effective manner. Thus, the impugned order being illegal, perverse and against the letter and spirit of Order 26 Rule 9 of the Code and deserves to be set aside by way of acceptance of instant revision. Consequently, application is to be accepted.

On the other hand learned counsel for respondents No.1 and 2 has submitted that firstly the impugned order whereby, appointment of Local Commissioner has been declined, is not revisable either under Section 115 of the Code or under Section 227 of the Constitution of India. Secondly, there is no infirmity or illegality in the impugned order and the appointment of Local Commissioner has rightly been declined by the trial Court, as the petitioner intended to collect the evidence which he is otherwise supposed to prove by adducing his evidence. He further submits that since the impugned order is absolutely in consonance with the settled proposition of law, the instant revision being devoid of merits is liable to be dismissed.

After bestowing due consideration to the rival submissions made by learned counsel for the parties as well as scanning the impugned order, this Court is of the considered view that neither the instant revision is legally maintainable nor there is any infirmity or perversity in the impugned order. By now it is well settled proposition of law that no revision lies against the order passed by learned trial Court refusing to appoint Local Commissioner in its discretion. Hence, discretion exercised by learned trial Court cannot be interfered by this Court in its revisional jurisdiction, either under Section 115 of the Code or under Article 227 of the Constitution of India. To fortify the

aforesaid observation, we can have the reference of judgment rendered in **Pritam Singh and another vs. Sunder Lal & others; 1990 (2) PLR 191** in which a Division Bench of this Court by relying upon the decision of this Court rendered in **Harvinder Kaur vs. Godha Ram; ILR 1979 (1) P&H 147**, it has been observed that no revision would lie against an order passed under Order 26 Rule 9 of the Code.

In a subsequent judgment rendered in **Sumer Chand Jain vs. Vishnu Bhagwan Mangla; 2006 (2) RCR (Civil) 445** by placing reliance upon Harvinder Kaur's case (supra) and Pritam Singh's (Supra), observed as under:

*“In two Division Bench decisions of this Court in **Smt. Harvinder Kaur and another v. Godha Ram and another, AIR 1979 Punjab and Haryana 76** and **Pritam Singh v. Sunder Lal, 1991 (1) RRR 356; 1990 (2) 98 PLR 191**, it has been held that the order refusing to appoint the Local Commissioner under Order 26 Rule 9 C.P.C. is not revisable under Section 115 C.P.C., therefore, such an order should not be interfered now under Article 227 of the Constitution of India. In this regard, in **Hari Om v. Minish Kumar, (2005-2) PLR 690**, it was observed by this Court that if a revision petition under Section 115 C.P.C. against the impugned order is not maintainable, then by mere change in the head note of the petition, the substance cannot be replaced to wriggle out from the rigors of law which is well settled that no revision petition under Section 115 C.P.C. is maintainable.”*

An identical question came before this Court for determination in the cases of **Bant Singh @ Balwant Singh and another vs. Raghubir Singh & others; 2008(4) RCR (Civil) 260** and **Rajiv Kumar Batra vs. Kashmiri Lal Sika; 2010 (6) RCR (Civil) 37** in which also it was held that revision petition either under Article 227 of the Constitution of India or under Section 115 of the

Code is not maintainable against an order dismissing application for appointment of Local Commissioner.

Here it would also be pertinent to mention that in the case of **Surya Dev Rai vs. Ram Chander Rai & others; 2003 (6) SCC 675;** the Hon'ble Apex Court has settled law to the effect that supervisory jurisdiction is not available to be exercised for indulging in re-appreciation or evaluation of evidence or correcting the errors for drawing inference like a Court of appeal. In the said case the Hon'ble Apex Court has held as under:

“Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.”

Adverting to the facts of the case in hand, firstly, the instant revision is not maintainable in view of the discretion made above and secondly, the intention of petitioner by moving of an application for appointment of Local Commissioner is nothing but to collect the evidence in support of his claim. The verification or non verification of various bills and work done at the spot is required to be established by way of adducing evidence in this regard and such a power cannot be delegated to Local Commissioner.

Thus, taking the case of the petitioner from any of the angles, this Court is of the considered view that no interference of this Court is justified in the impugned order, which otherwise is in consonance with the evidence available on file as well as settled cannons of law.

In the light of what has been discussed above, this Court does not

find any merit in the instant petition. As such, it stands dismissed.

No order as to costs.

APRIL 06, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*