

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

CR No.6350 of 2016

Date of Decision: 06.10.2017

Bhag Chand

...Petitioner

Versus

Ramchander and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Harish Nain, Advocate
for the petitioner.

Mr. V.D.Sharma, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has filed this revision petition against the order dated 15.09.2016 passed by Additional Civil Judge (Senior Division), Narwana, vide which application filed by the plaintiffs/respondents for appointment of Local Commissioner was allowed.

[2]. The issue involved before this Court is whether the order granting the prayer for appointment of Local Commissioner or refusal thereof is revisable in nature.

[3]. 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.

[4]. The order refusing to appoint Local Commissioner does not decide any issue on merit and no substantial right *inter se* the parties is adjudicated by such an order in the suit. Therefore, such an order is held to be not revisable in nature. Refusal to appoint Local Commissioner has 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 and therefore, revision is not maintainable against such an order.

[5]. In view of **Sumer Chand Jain Vs. Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445, Hari Om Vs. Minish Kumar, 2005(2) PLR 990, 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,** it can be noticed that by mere change in the headnote of the petition, pith and substance of the prayer cannot be changed or replaced in order to wriggle out from the rigor of law.

[6]. Once the trial Court has exercised its jurisdiction in the context of appointment or refusal to appoint a Local

Commissioner, the indulgence by the High Court cannot be granted. In **Rajinder & Co. Vs. Union of India and others, 2003(1) RCR (Civil) 755**, the Hon'ble Apex Court has held that the question whether the report of the Local Commissioner is finally acceptable or not would be decided by the concerned Court *de hors* the order passed by the authority concerned. High Court cannot interfere with the order of the trial Court appointing the Local Commissioner for inspection of the site and to file a report. The said judgment was followed by this Court in **Harpal Singh Vs. Harmohinder Singh and others, 2013(2) RCR (Civil) 892**.

[7]. In the light of aforesaid legal position, the arguments of learned counsel for the petitioner based on observation of this Court in **Dhan Singh Vs. Darshan Singh and another, 2007(1) PLJ 376** cannot be accepted to a proposition of law in the situation arising out of facts of the present case.

[8]. In view of above, there cannot be any error of jurisdiction in the impugned order dated 15.09.2016 passed by Additional Civil Judge (Senior Division), Narwana. This revision petition is accordingly dismissed.

06.10.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No