

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

CR No.6838 of 2017

Date of Decision: 04.10.2017

Indra Singh

...Petitioner

Versus

Pritam Singh and others

... Respondents

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

Present:Mr. Varun Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 15.07.2017 passed by Civil Judge (Junior Division), Jalandhar vide which application for appointment of Local Commissioner was dismissed and order dated 05.08.2017 whereby review application against the order dated 15.07.2017 was also dismissed by the Civil Judge (Junior Division), Jalandhar.

[2]. The issue involved in the instant case is in respect of appointment of Local Commissioner. The prayer for appointment of Local Commissioner was declined by the trial Court after noticing the fact that the plaintiff himself relied upon report of Local Commissioner appointed on earlier occasion and the report given by the Local Commissioner was not found in

favour of the plaintiff. Plaintiff sought to get another Local Commissioner appointed.

[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]. In view of above-cited precedents and settled position of law, the process of the Court cannot be utilized to collect evidence for either of the parties. In the given case, in the event of finding adverse report of previous Local Commissioner, the plaintiff had remedies to file objections against the report or to impeach the credibility of the Local Commissioner in due course of law.

[7]. Consequently, no error of jurisdiction is found in the impugned orders passed by the trial Court. This revision petition is accordingly dismissed.

04.10.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No