

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

CR No. 7077 of 2017

Date of Decision: 11.10.2017

KULWANT SINGH

-PETITIONER

VS

PUNJAB STATE POWER CORPORATION LTD AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.S. Batth, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

[1]. This revision petition has been preferred by the petitioner against the order dated 24.07.2017 passed by Civil Judge (Junior Division), Patti whereby the application of the petitioner under Order 26 Rule 9 read with Section 151 CPC for appointment of local Commissioner was declined.

[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 by observing that pleadings of parties are matter of evidence. Appointment of Local Commissioner will not serve any purpose and the same will amount to collection of evidence for the parties which is not permissible in law.

[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 order passed by the trial Court. This revision petition is accordingly dismissed.

11.10.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No