

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.7375 of 2017

ORDER:

Heard learned counsel appearing for both the parties.

The revision is directed against order in I.A.No.289 of 2017 in O.S.No.162 of 2011. The trial Court through order impugned in the revision declined the prayer of the petitioner for appointment of Advocate Commissioner to undertake local inspection of subject matter of the suit and file a report. The reasons for rejecting the prayer are that this Court in C.R.P.No.4080 of 2012 vide order dated 18.12.2012 permitted the parties to seek appointment of Advocate Commissioner. The prayer for appointment of Advocate Commissioner is made after five long years and the delayed attempt on the liberty granted by the High Court shall have to be treated as disobeying the order dated 18.12.2012 and that the Advocate Commissioner is not appointed where the parties can produce the evidence in support of their respective claims. This Court is of the view that the Court below through the order impugned in Civil Revision Petition is not clear on whether the findings recorded by this Court in Civil Revision Petition No.4080 of 2012, in fact, are given effect to or alternatively holds that parties can adduce evidence, hence the prayer is rejected. Even assuming one or the other reasons weighed with the trial Court, this Court is of the view that the trial Court misdirected itself in considering the prayer for appointment of Advocate

Commissioner in the background of observations made by this Court.

Though Mr.Ravinder tried to persuade this Court by contending that the parties can certainly adduce evidence, instead of appointing Advocate Commissioner, I am afraid what is applicable to the order under challenge is with equal force applicable to the resistance offered by Ravinder as well. The contention is rejected. The order under revision is set aside. I.A. is allowed and the trial Court is directed to appoint Advocate Commissioner within one (1) week from the date of receipt of copy of this order. The parties are given liberty to file work memos for execution by the Advocate Commissioner.

As the suit, an old one, the parties if excessively utilize the opportunity of appointment of Advocate Commissioner for dragging on the trial, the trial court is given discretion to pass appropriate orders and proceed with trial and complete the suit as expeditiously as possible preferably within three (03) months from today.

Accordingly, the Civil Revision Petition is allowed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 25.01.2018

Note:
CC forthwith
(B/o) dv

