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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1221-2014

Date of decision : 26.02.2018

Hardev Singh

... Petitioner(s)

Versus

Ashok Kumar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tapish Gupta, Advocate for
Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Prashant Bansal, Advocate
for respondent No.1.

Ms. Akanksha, AAG, Punjab.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 10.02.2014, whereby the application at the instance of the petitioner-plaintiff for appointment of the Local Commissioner in a suit seeking damages to the tune of ₹5,00,000/- on account of laying a water pipeline in the village, which has passed in front of house of the plaintiff, has been dismissed.

Learned counsel for the petitioner-plaintiff submits that the aforementioned suit was filed whereby the petitioner-plaintiff and defendant led the evidence. In the cross-examination, the defendant admitted that there was a leakage in the pipeline, but at the stage of rebuttal evidence, the application for appointment of Local Commissioner was moved on

10.02.2014 to establish the blockage of the pipeline from both sides, which was lying in front of the plaintiff's house as the defendant had denied the blockage of the pipeline. The aforementioned application was essential and necessary for the adjudication of the *lis*, but the same has erroneously been rejected/dismissed. No prejudice and harm would be caused to the defendant as he would be able to cross-examine the local Commissioner.

Learned counsel for respondent No.1 submits that the plaintiff had not reserved the right to lead evidence in rebuttal while closing the evidence in affirmative and such evidence would tantamount to filling up the lacuna in the absence of the rebuttal evidence, therefore, the application has rightly been dismissed, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that though the trial Court had not given the specific reason for denial of the application, except that it being a target category case as sufficient opportunities were taken by the plaintiff, while leading evidence in affirmative, but the fact of the matter is that such application in my view, would tantamount to filling up the lacuna, which is not permissible in law. Though the trial Court had adjourned the matter for rebuttal evidence, but no issue in the suit has been shown to form an opinion that there was some rebuttal issue, therefore, the plaintiff would have given a chance, that to, he had kept his right reserved to lead evidence in affirmative. No such statement was made. In view of such fact, the trial Court rightly dismissed the application.

For the foregoing reasons, I do not find any illegality and perversity in the impugned order, under challenge as the same cannot be

said to be suffered from illegality and perversity, much less, no ground is made out for interference and accordingly, the present revision petition is dismissed.

26.02.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No