

118

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

CR No. 6691 of 2018

Date of Decision: 04.10.2018

Pawan Kumar

....Petitioner

Vs

Municipal Council, Narnaul and another

.....Respondents

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

Present: Mr. Shashi Kant Gupta, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Plaintiff-petitioner has preferred this revision petition against the order dated 23.08.2018 passed by Additional Civil Judge (Senior Division), Narnaul vide which application for appointment of local Commissioner was dismissed.

In a suit for permanent injunction, plaintiff sought to get a local Commissioner appointed for ascertaining the direction of slop of the road to be constructed by defendants-Municipal Council.

Official of Municipal Council has already appeared in the Court and made a statement that there will be no slop towards the house of the plaintiff and the new road will be constructed on the level of the old road.

Despite the aforesaid statement made on behalf of

the defendants- Municipal Council, plaintiff-petitioner sought to get a local Commissioner appointed by the process of the Court in order to collect evidence.

It is a settled principle of law that process of the Court cannot be utilized to collect evidence by the party. The plaintiff-petitioner instead of leading his own evidence wanted to utilize process of the Court in order to ascertain the slop of the road which is being constructed by the Municipal Council.

In **Harvinder Kaur and another vs Godha Ram and another, 1979 PLJ 562 (DB)**, it was held that revision against such an order i.e. refusing to appoint local Commissioner is not maintainable. The impugned order has not decided any substantive right of the plaintiff-petitioner. Similar view was expressed in **Pritam Singh and another vs Sunder Lal and others, 1990 PLJ 418.**

The order refusing to appoint local Commissioner has not decided any issue on merits. No right of the plaintiff has been adjudicated by the impugned order. Plaintiff-petitioner would be well within his right to lead substantive evidence during trial. The discretion of the Court cannot be utilized for collecting evidence for the plaintiff. In the event of refusal of such discretion, no right flows from the order to assail in the High Court.

Even in case of acceptance of such prayer by the trial Court, revision is not maintainable in view of **Rajinder and Co. vs Union of India and others, 2003(1) RCR (Civil) 755** which was followed in **Harpal Singh vs Harmohinder Singh and others, 2013(2) RCR (Civil) 892.**

In view of aforesaid legal position, it can be held that the appointment of local Commissioner cannot be made for collecting evidence for a party and supporting its cause.

Similar view was taken in **Tatvadarsha Bandhu Pvt. Ltd. vs Municipal Corporation, 2015(2) PLJ 349, Civil Revision No.7286 of 2016 titled 'Kishori Lal vs Suresh Kumar and others',** decided on 02.08.2018 and **Civil Revision No.4314 of 2017 titled 'Pritam Singh vs Bahadur Singh and others',** decided on 31.07.2017.

In view of aforesaid position, I find that there is no jurisdictional error in the impugned order.

Consequently, no indulgence can be granted to the petitioner.

This revision petition is accordingly, dismissed.

04.10.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |