

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.7354 of 2011 (O&M)

Date of decision:11.12.2018

Ram Asra

... Petitioner

Vs.

Suraj Bhan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Manav Satija, Advocate for
Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. Navneet Singh, Advocate
for respondent No.12.

Mr. Sandeep Kumar Sharma, Advocate
for respondents No.1 to 6 and 11.

Mr. Parveen Kumar Rohilla, Advocate
for respondent No.13.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 19.04.2011, whereby, application of the petitioner/decreed-holder for cross-examination of the Local Commissioner, has been rejected.

The petitioner-decreed holder instituted a suit for permanent injunction against the respondents regarding the plot nos.664 and 665 which was decreed on 22.10.1992 and in the execution proceedingsa, Local Commissioner was appointed, who submitted his report. The decree-holders are stated to have submitted the objections but in order to ascertain the truth,

sought the cross-examination, which has been declined as objections qua report of the Local Commissioner were dismissed on 20.05.2009.

Learned counsel appearing on behalf of the petitioner submitted that aforementioned order is not in consonance with the provisions of Order 26 Rule 10(2) CPC.

Learned counsel appearing on behalf of the judgment-debtor supported the order under challenge and submitted that it is nothing but pressure and dilatory tactics. The right of the cross-examination of the Local Commissioner, in view of the dismissal of the objections already stood forfeited.

I have heard the learned counsel for the parties and appraised the paper book. For adjudication of the lis, it would be apt to reproduce the provisions of Order 26 Rule 10(2) CPC:-

“(2) Report and depositions to be evidence in suit. Commissioner may be examined in person - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation”

The aforementioned statutory provisions empower the party to seek assistance of the Court for cross-examination of the Local Commissioner as in the absence of such prayer, report is per se admissible. The trial Court remained oblivious of the fact that the objections are not matter of record, rather not maintainable, in view of the law laid down by the a Division Bench of this Court in Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander 1989 PLJ 257.

The impugned order is not sustainable and the same is hereby set aside. The application of the petitioner for cross-examination of the Local Commissioner is allowed. Consequently, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

December 11, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No