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

**Civil Revision No.7286 of 2016 (O&M)
Date of Decision: 02.08.2018**

KISHORI LAL

.....Petitioner

Vs

SURESH KUMAR & ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Manish Mehta Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 03.10.2016 passed by the Civil Judge (Jr. Divn.) Narnaul, whereby application filed by defendant No.1 under Order 26 Rule 9 read with Order 39 Rule 7 and Section 151 CPC was dismissed.

[2]. I have considered the submissions made by learned counsel for the petitioner.

[3]. The issue of appointment or rejection of the Local Commissioner is not such which can be raked up under Article 227 of the Constitution of India as no substantial right of the party is decided. In case of appointment of the Local Commissioner, his report can be attacked by way of filing

objections to the admissibility, veracity and genuineness of the report prepared by him and the same can be questioned before the trial Court at the appropriate stage.

[4]. It is true that no party can be allowed to take recourse to the process of the Court for collecting evidence. Once the discretion has been exercised by the trial Court either for appointment of the Local Commissioner or rejection thereof, the jurisdiction under Article 227 of the Constitution of India cannot be exercised.

[5]. 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.**

[6]. The order refusing to appoint Local Commissioner does not decide any issue on merit inasmuch as that no substantial right of the either party is adjudicated by such order. The order is held to be not revisable, even in case of acceptance of the application for appointment of the Local Commissioner.

[7]. In **Rajinder & Co. vs. Union of India and others,**

2003(1) RCR (Civil) 755, the Hon'ble Apex Court has held that the question whether the report of the Local Commissioner is finally acceptable or not would be decided by the concerned Court, *de hors* the order passed by the authority concerned. The High Court cannot interfere with the order of the trial Court appointing the Local Commissioner for inspection of the site and to file a report. The said judgment was followed by this Court in Harpal Singh vs. Harmohinder Singh and others, 2013(2) RCR (Civil) 892.

[8]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned dated 03.10.2016 passed by the Civil Judge (Jr. Divn.) Narnaul. This revision petition is accordingly dismissed.

August 02, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No