

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

**Civil Revision No.7400 of 2017 (O&M)
Date of Decision:21.12.2018**

Jasbir Singh

.....Petitioner

Vs

Amrita Singh @ Amrit Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. A.K. Sinha, Advocate
for the petitioner.

Mr. Satbir S. Katnoria, Advocate
for respondents No.1 to 4.

Mr. Sanjiv Ghai, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the orders dated 22.09.2017, 28.09.2017 and 06.10.2017 passed by the Civil Judge (Jr. Divn.) Chandigarh and also for implementation of order dated 23.08.2017 passed by the High Court for cross-examination of the petitioner at the place of his residence at village Naini (Ranikhet) District Almora, Uttrakhand after giving intimation to the petitioner. Petitioner has also challenged the report of Local Commissioner dated

06.10.2017. Though other prayers have also been made which are not relevant for decision of the present case.

[2]. Petitioner claimed himself to be a disabled person. Vide order dated 24.07.2013 passed in CR No.6549 of 2012, the High Court allowed the prayer of the petitioner for recording his cross-examination at the place of his residence. The order reads as under:-

“1. Both counsel agree that an Advocate Commissioner could be appointed for examination of the plaintiff. The counsel for the petitioner himself states that the cost the Commission will be borne by the plaintiff. This, I hold, shall be irrespective of the result of the case. The trial Judge shall appoint senior-most amongst lawyers in the panel of Commissioners as a Commissioner to record the evidence of the plaintiff. The venue of Commission shall be the Chief Judicial Magistrate Court's premises at Dehradun. The order of Commission shall be communicated to the Chief Judicial Magistrate for making appropriate arrangements for allocating the place for examination of witness at the Commission.

2. The remuneration for the Commissioner shall be fixed by the trial Judge in accordance with rules and practice. The petitioner shall also be liable to pay ₹10,000/- for transport expenses of the defendant at every effective hearing of the Commission. The effective hearing date will be when the Commissioner shows up at the venue after notice to parties informing them about the date of hearing. The endeavour shall be made by the Commissioner to conclude the hearing as expeditiously as possible and

fixing the date which is mutually convenient to parties, ideally on a holiday which will not disturb the proceedings of the Chief Judicial Magistrate at Dehradun. Since the defendant apprehends personal safety, the Chief Judicial Magistrate, Dehradun shall secure appropriate bandobast at the place where the enquiry is being conducted so that there is no scope for any physical harm or any untoward incident at the place of Commission.

3. *The order copy be communicated to the trial Court immediately. The order copy be also sent to the District Judge at Dehradun with a request to accommodate the hearing under the special circumstances in which the order is issued.*

4. *The Commissioner shall fix the date and inform the parties appropriately. The plaintiff shall serve proof of affidavit and the copies of documents which are sought to be relied on a week in advance, so that the defendant or the counsel is ready to conclude the cross-examination immediately on that day.*

5. *The civil revision is disposed of with the above directions.”*

[3]. In due course, the matter came to be reconsidered by the High Court in CR No.1563 of 2016. The Civil Judge (Jr. Divn.) Chandigarh vide order dated 22.09.2017 appointed Sh. Rajesh Kumar Rai, Advocate as Local Commissioner for the purpose of recording cross-examination of the plaintiff at his residence in village Naini (Ranikhet), District Almora, Uttarakhand on 29.09.2017. The fee of the Local Commissioner was assessed to be Rs.35,000/- which was to be paid by defendants

No.1 to 4 through demand draft. The transportation cost of Rs.15,000/- was to be paid by defendants No.1 to 4 to the Local Commissioner in cash. Remaining amount of Rs.50,000/- was to be paid by defendants No.1 to 4 to the plaintiff through demand draft. The fee of the Local Commissioner and transportation cost were to be paid by defendants No.1 to 4 before, they start from Chandigarh. The costs of Rs.50,000/- through demand draft was to be paid by defendants No.1 to 4 to the plaintiff before start of his cross-examination at his doorstep on 29.09.2017. One opportunity was granted and scheduled as per order of the High Court and it was ordered that the cross-examination of the plaintiff was to be completed from 9.30 a.m. to 4.00 p.m. at the residence of village Naini (Ranikhet), District Almora, Uttarakhand.

[4]. Against the order dated 23.08.2017 passed by the High Court in CR No.1563 of 2016, a review application No.RA-CR No.166-CII of 2017 was filed by the petitioners therein i.e. respondents in the present petition. The said review petition was dismissed vide order dated 26.09.2017.

[5]. Perusal of the record would show that the Local Commissioner vide letter dated 23.09.2017 gave intimation to the petitioner and his Advocate. He had also given notice to the defendants and their counsel for his visit on the date fixed, but

defendant No.1 told that she was not in a position to go to village Naini (Ranikhet) and will wait for decision of the review application pending in the High Court and was unable to pay fee as ordered. It was also intimated by the Local Commissioner, since defendant No.1 has not paid fee as per orders of the Court and has also refused to visit for cross-examination of the plaintiff, therefore, Local Commissioner informed the plaintiff and his counsel that he will not come for cross-examination as his fee was not paid.

[6]. Second intimation was also sent by the Local Commissioner on 26.09.2017 in the aforesaid context that fee was not paid as per order of the Court, therefore, the Local Commissioner will not go to record cross-examination of the plaintiff. This letter was addressed to learned counsel for the parties and decision of the Local Commissioner was conveyed. It was also recorded that at about 5.00 p.m. on 26.09.2017, learned counsel for defendants No.1 to 4 came to him and informed him that review application was dismissed and they made the payment of fee to the Local Commissioner. Factum of payment of fee was endorsed by the Local Commissioner and parties were informed through their counsel that the Local Commissioner would visit the residence of the plaintiff at 9.00 a.m. on 29.09.2017 at village Naini (Ranikhet) District Almora,

Uttrakhand and would start cross-examination at 9.30 a.m. Addressees were requested to come on the date fixed as per orders of the Court and cross-examination of the plaintiff would be completed on the said date.

[7]. It appears from the record that the Local Commissioner had visited the house of the plaintiff on the date fixed, but he was not allowed to cross-examine the plaintiff on the premise that the plaintiff was ailing and was hospitalized. Wife of the plaintiff did not inform about the name of the hospital in which he was hospitalized. The amount of Rs.50,000/- payable to the plaintiff through demand draft could not be paid to the plaintiff and the same was placed on the record of the case before the trial Court.

[8]. At one point of time, even the plaintiff/petitioner objected to handing over the original record to the Local Commissioner for the purpose of cross-examination. Dispute with regard to passing of communication has also been raked up by petitioner on the premise that there was no clear notice issued to the plaintiff regarding visit of the Local Commissioner.

[9]. Learned counsel for the respondents No.1 to 4 by referring to the efforts made by the plaintiff/petitioner himself on 27/28.09.2017 submitted that learned counsel for the petitioner

was very much alive to the situation. Date of visit of the Local Commissioner was scheduled by the Court vide order dated 22.09.2017 and thereafter nothing was left to be done at the instance of Local Commissioner or by the parties. Since the fee of the Local Commissioner was not paid, therefore, notices/letters dated 23.09.2017 and 26.09.2017 were issued by the Local Commissioner. Moment the fee of the Local Commissioner was paid to him, he informed learned counsel for the parties accordingly.

[10]. Learned counsel further submitted that the scheduled visit of the Local Commissioner after receipt of payment of fee was very much conveyed to learned counsel for the plaintiff/petitioner and filing of the application by learned counsel for the petitioner on 27.09.2017 and 28.09.2017 in the context of original record not to be handed over to the Local Commissioner were suggestive of the fact that the intimation regarding visit of the Local Commissioner as scheduled was very much communicated to the learned counsel for the petitioner. Learned counsel further submitted that since the date was fixed in the presence of learned counsel for the parties, therefore, the Local Commissioner was not supposed to give any notice to the parties in person as the notice issued to learned counsel for the parties were sufficient to affirm his visit as per schedule

given/fixed by the Court.

[11]. Both the parties have raised allegations on each other which are not relevant for decision of the present revision petition.

[12]. Since the visit of the Local Commissioner has not yielded any positive result in the context of cross-examination of the plaintiff as he was not found present in the house as his wife did not co-operate with the Local Commissioner and did not inform about the hospital in which plaintiff was admitted. The fee of the Local Commissioner and transportation charges were duly paid by defendants No.1 to 4. A demand draft of Rs.50,000/- was also ready with defendants No.1 to 4 to be paid to the plaintiff on 29.09.2017 at his place of residence, but the same could not be paid to the plaintiff for want of his presence in the house and resultantly, the demand draft has been placed on record with the case file before the trial Court.

[13]. Since cross-examination of the plaintiff by the Local Commissioner was allowed by the High Court vide order dated 24.07.2013 passed in CR No.6549 of 2012, at his place of residence which was also affirmed by the High Court vide order dated 23.08.2017 passed in CR No.1563 of 2016 when the conduct of the defendants No.1 to 4 was deprecated and costs

of Rs.1,00,000/- was imposed which was to be defrayed towards the fee and transportation charges of Local Commissioner to be appointed by the Court and balance amount to be paid to the plaintiff. Fee of the Local Commissioner was assessed to be Rs.35,000/-. An amount of Rs.15,000/- was assessed to be costs of transportation and the remaining amount of Rs.50,000/- was required to be paid to the plaintiff at the time of his cross-examination at his house. Schedule of visit of the Local Commissioner was fixed by the trial Court vide order dated 22.09.2017 in the presence of learned counsel for the parties. There was no dispute with regard to the date fixed by the Court i.e. 29.09.2017 on which Local Commissioner was to cross-examine the plaintiff at his place of residence in village Naini (Ranikhet) District Almora, Uttarakhand. Payment of fee and transportation charges of the Local Commissioner were required to be paid before his start from Chandigarh and the costs of Rs.50,000/- through demand draft was to be paid by defendants No.1 to 4 to the plaintiff before start of his cross-examination at his doorstep on 29.09.2017. Since plaintiff was not found present in the house on 29.09.2017, an amount of Rs.50,000/- incurred by the defendants No.1 to 4 has gone waste. The demand draft of remaining amount of Rs.50,000/- payable to the plaintiff at his

doorstep could not be delivered to him in his absence. The demand draft has been placed on the case file before the trial Court.

[14]. For the purposes of cross-examination, defendants No.1 to 4 along with their counsel have also gone to the place of residence of the plaintiff in village Naini (Ranikhet) District Almora, Uttarakhand by incurring huge expenses. The quantification of such expenses cannot be made at this stage, however keeping in view the place of residence of the plaintiff and its distance from Chandigarh, this Court can fairly assess the amount of expenses incurred by defendants No.1 to 4 and the same may not be less than Rs.30,000/-.

[15]. In view of the material on record, this Court is not convinced with the arguments raised by learned counsel for the petitioner, however since the plaintiff was entitled to be cross-examined at his doorstep in view of order dated 24.07.2013 passed by the High Court in CR No.6549 of 2012, therefore, I deem it appropriate to order for re-scheduling of visit of the Local Commissioner, however at the cost of the plaintiff. This time plaintiff/petitioner shall bear fee and transportation charges of the Local Commissioner. Plaintiff shall also pay consolidated amount of Rs.30,000/- towards the costs incurred by them in the past and likely costs to be incurred again while visiting village

Naini (Ranikhet) District Almora, Uttarakhand.

[16]. In view of aforesaid, the trial Court is directed to re-schedule the visit of the Local Commissioner in terms of the aforesaid observations. If the aforesaid conditions are not fulfilled by the plaintiff/petitioner, then the present revision petition would be deemed to be dismissed without making any further reference.

[17]. For the reasons recorded hereinabove, this revision petition is disposed of.

December 21, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No