

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

**C.R. No.888 of 2018 (O&M)
Date of Decision.06.12.2018**

Chhattar Singh

....Petitioner

Vs

Mohan Lal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order dated 05.01.2018 (Annexure P-6) whereby the application of the petitioner for examination of the local commissioner, whose report dated 18.11.2006 is already on record, has been dismissed.

Mr. Amit Jain, learned counsel appearing for the petitioner-defendant No.1 submitted that in the absence of presence of either of the side, report of the local commissioner was prepared and since the report is not as per spot, petitioner-defendant No.1 sought indulgence of the Court as per provisions of sub-rule 2 of Rule 10 of Order 26 CPC but the same has been declined without considering the aforementioned provisions.

Mr. Ashish Gutpa, learned counsel appearing on behalf of the respondent opposed the revision petition by supporting the impugned order on the premise that application is nothing but delaying tactics as the petitioner-defendant No.1 has already been

proceeded ex parte, though the ex parte order was set aside later on.

The provisions of Order 26 Rule 10 (2) CPC read as under:-

“26. Procedure of Commissioner.

xxxx

xxxx

xxxx

(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 application (Annexure P-4) at the behest of the petitioner-defendant was submitted in compliance of the aforementioned provisions. In such circumstances, the court cannot take away right of the petitioner when it is so asserted as the objections against report of the local commissioner in view of the law laid down by Division Bench of this Court in **Balbir Dewan Cold Storage and General Mills Vs. Naveen Chander 1989 (1) PLR 677** are not maintainable.

In view of the aforementioned observation, the impugned order is aside as the same is not sustainable in the eyes of law. The application (Annexure P-4) is allowed. The petitioner is directed to examine the local commissioner but under the garb of this order shall not be permitted to take unexplained adjournments.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

December 06, 2018

Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No