

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

**CR No.524 of 2019(O&M)
Date of Decision: 07.02.2019**

M/s Arun Shoe Store

.....Petitioner

Versus

Talwar Brothers and others

.....Respondents

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

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

RAJ MOHAN SINGH, J.(Oral)

[1]. This revision petition has been preferred by the petitioner against the order dated 26.10.2018 passed by Civil Judge (Junior Division), U.T. Chandigarh whereby the application under Order 26 Rule 9 read with Section 151 CPC for appointment of Local Commissioner was dismissed.

[2]. Initially a suit for permanent injunction was filed. In the said suit, prayer for appointment of Local Commissioner was accepted by the trial Court vide order dated 10.08.2009. Local Commissioner had inspected the site and found that there were pucca structures existed on the suit property. In view of report of Local Commissioner, plaintiff amended the suit thereby seeking mandatory direction for removal of unauthorized construction.

[3]. Amit Kumar, J.E, SDO Building Estate Office,

Chandigarh has been examined as DW 2. The witness has stated in his cross-examination that as per photograph attached with the demolition drive, the iron rods are still persisting on the ground floor of the back courtyard of SCO No.68-69, Sector 15-D, Chandigarh.

[4]. According to the learned counsel for the petitioner, the stand taken by the defendant in respect of removal of unauthorized encroachment stood falsified in view of aforesaid statement. The witness has further admitted that at the time of demolition drive, undertaking was given by the wife of Gursharan that they will remove the complete lintel by themselves.

[5]. In view of aforesaid admission on the part of the defendant, the trial Court would decide the suit on merits after appreciating available evidence on record. The appointment of Local Commissioner on second occasion for the said purpose in my considered opinion is not necessary in view of undertaking of the defendant recorded by the Estate Office. The Estate Office would act in accordance with law. Even otherwise, the Court cannot be instrumental for allowing the parties to collect evidence with the process of the Court.

[6]. In view of ratio laid down in **Harvinder Kaur and another Vs. Godha Ram and another, 1979 PLJ 562 PB, M/s**

Mohinder Kumar Rajinder Parkash Dalmir Singh @ Dalmira and Mangal Singh and another Vs. Piara Lal, 1971 PLR 531, Pritam Singh and another Vs. Sunder Lal and others, 1990 PLJ 418, Sumer Chand Jain Vs. Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445 and Hari Om Vs. Minish Kumar, 2005 (2) PLR 690, the revision petition is not maintainable.

[7]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction in the impugned order dated 26.10.2018 passed by Civil Judge (Junior Division), U.T. Chandigarh This revision petition is found to be totally devoid of merits and is accordingly dismissed.

07.02.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE****Whether reasoned/speaking
Whether reportable****Yes/No
Yes/No**