

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

CR No.1051 of 2019 (O&M)
Date of decision : 13.02.2019

Surat Singh

...Petitioner

Versus

Sohan Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Swati Verma, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-petitioner is in the revision petition against the order passed by the learned trial Court refusing to appoint a Local Commissioner for the purpose of cross-examination of defendant No.1.

Defendant No.1-petitioner had filed an application on the ground that he is old aged person suffering from disk problem and, therefore, he is not able to come to the Court for cross-examination.

Learned trial Court dismissed the application on the ground that the application is not supported by an affidavit and treatment slip do mention about the particular disease but that is not sufficient to lead a conclusion that defendant No.1-petitioner is extremely ill. The conclusion drawn by the Court is too far-fetched. The amended Code of Civil Procedure permits the examination of the witnesses through Local Commissioner. The evidence of the defendants was going on. In such

circumstances, the Court took hyper-technical view in refusing to appoint a Local Commissioner particularly when defendant No.1-petitioner was ready to bear the costs.

Keeping in view the aforesaid facts, the order under challenge is set aside.

The trial Court would appoint a Local Commissioner for conducting cross-examination of the defendant. Since, counsel for the plaintiff would also be required to go to the Village where defendant No.1 resides, therefore, apart from the charges of the Local Commissioner, defendant No.1-petitioner is burdened with costs of Rs.5,000/- towards charges of the counsel for the plaintiff.

Counsel for the petitioner has informed the Court that the case is fixed for tomorrow i.e. 14.02.2019.

Learned trial Court would appoint a Local Commissioner tomorrow itself and the date of cross-examination of the witnesses be fixed during next 10 days, subject to convenience of learned counsel for the parties.

Since, the order has been passed without issuing notice, plaintiff shall be at liberty to move an application for recall.

In view of what has been observed above, the present revision petition is allowed.

13.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No