

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

CR No. 2407 of 2019 (O&M)
Date of decision: 10.4.2019

Ved Parkash

...Petitioner

Versus

Sanjay Adlakha

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sandeep Chhabra, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

This revision has been filed under Article 227 of the Constitution of India with a prayer for setting aside the order dated 16.1.2019 passed by the Rent Controller, Faridabad, whereby the application filed by the petitioner under Order 16 Rule 9 of the Code of Civil Procedure for appointment of a Local Commissioner has been dismissed.

In brief, the facts are that the respondent herein filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 for eviction of the petitioner from Shop No.4, forming part of House No. 2A/12, BP, NIT, Faridabad, on the ground of bonafide necessity as he as well as his son wanted to open an office of tour & travel with the consent of other co-owners.

During the pendency of the eviction petition, the

petitioner/tenant filed an application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of a Local Commissioner on the ground that a huge area behind Shop No.4 in House No. 2A is lying vacant and this area can be used by the respondent for running his business. It was further submitted that the fact of the area being lying vacant can be ascertained by a Local Commissioner after inspecting the property bearing No. 2A/12 BP, NIT, Faridabad with regard to existing position.

The application was contested by the respondent, who submitted that there was no need for appointment of a Local Commissioner and in case the petitioner wants to prove any such fact, the same can be done by leading evidence in that regard and it is not permissible in law for the tenant to seek such direction to get evidence in his favour from the court.

The Rent Controller dismissed the application by observing that *“even if rear portion of house behind the shop in question is vacant still it is for landlord to ascertain and to see whether the vacant portion can be made use of by him for his future endeavors or for running his new business. It is specific case of petitioner that the shop in question is situated at prime location. Hence it is for him to see whether he can start his business by using the rear portion which may not be adjoining the main road just like the shop in question....”*

Learned counsel for the petitioner submits that the learned Rent Controller has wrongly dismissed the application for appointment of a Local Commissioner, it is submitted that by bringing the existing position of the building on record, it would help the court to ascertain whether the respondent/landlord has bonafide requirement or not.

I have heard learned counsel for the petitioner and perused the impugned order well as the documents annexed with the revision petition and I find no ground to interfere with the impugned order.

In a judgment rendered in **Bhajan Singh Versus Avtar Singh Kohlar, 2010 (2) RCR (Rent) 401**, this Court held that *“it is not understood as to how the measurement of the property, can lead to a conclusion that the need is not bonafide—the measurement of the property can in nowhere advance the case of the petitioners. In any case, it is not permissible in law to the tenants to seek such directions to get the evidence in their favour from the court. Hence, in this case also how bonafide need of the landlord can be denied if he raised construction on the second floor of the disputed house which forming part of tenanted premises. It seems that the respondents wants to create evidence in his favour through Court process which is not permissible in eyes of law.”*

Similarly, in the instant case, the appointment of a Local Commissioner to go on a fishing expedition to ascertain the existing position of the building is nothing but an attempt of the petitioner herein to try and create evidence in his favour, which is not permissible. Even otherwise, it is settled law that it is the direction of the court to appoint a Local Commissioner in case there is a dispute that can be settled in that fashion. Moreover, the respondent/landlord has stated that he had already sold a vacant portion of the building, as he required the money for settling his son and the nephew in business. The Rent Controller has rightly dismissed the application.

Consequently, the revision petition is dismissed.

10.4.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No