

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

CR No.2915 of 2019 (O&M)

Date of Decision: November 15, 2019

Santokh Singh and others

...Petitioners

Versus

Majinder Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Chawla, Advocate
for the petitioners.

Mr. Prateek Sodhi, Advocate
for respondents No.1 and 2.

JAISHREE THAKUR, J. (Oral)

1. This is a civil revision that has been filed seeking to challenge the order dated 03.04.2019 passed by the Rent Controller, Amritsar whereby, the application filed by the petitioners-tenants under Order 26 Rule 9 CPC for appointment of a Local Commissioner to visit the spot and to give the report concerning the number of shops in their possession, has been dismissed.

2. Briefly, the facts are that respondents No.1 and 2-landlords herein filed a petition under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioners-tenants herein from the tenanted premises on the ground of bona fide personal requirement. The said petition was contested by the petitioners. During the pendency of the

rent petition, an application under Order 26 Rule 9 CPC came to be filed by the petitioners seeking appointment of a Local Commissioner to visit the spot and to give the report concerning the number of shops in their possession, which application was contested by respondent No.1 and 2 by filing their reply. After hearing counsel for the parties, the Rent Controller by an order dated 03.04.2019 dismissed the said application, which order has been assailed by the petitioners-tenants in the instant civil revision.

3. Mr. Anil Chawla, counsel for the petitioners-tenants argues that the Rent Controller has failed to appreciate the fact that the application for appointment of a Local Commissioner was moved only to ascertain the physical possession, which is necessary for the proper adjudication of the case. It is also contended that the Rent Controller has erred in observing that the application moved is an attempt on the part of the tenants to obtain the evidence on their behalf at the hands of the Local Commissioner. In support of his arguments, learned counsel relied upon judgment rendered in ***Harvinder Kaur and another vs. Godha Ram and another, 1979 PLJ 562.***

4. Per contra, Mr. Prateek Sodhi, counsel for respondents No.1 and 2-landlords contends that the instant civil revision itself is not maintainable against the order refusing to appoint a Local Commissioner in view of the judgments rendered in ***Pritam Singh and another vs. Sunder Lal and others, 1991 (1) RRR 256, Sumer Chand Jain vs. Vishnu Bhagwan Mangla, 2006(2) RCR (Civil) 445, Rajiv Kumar Batra vs. Kashmiri Lal Sika, 2010(6) RCR (Civil) 37, Rambir Singh vs. Gram Panchayat, Narhera and others, 2011(37) RCR (Civil) 717, Sunil and others vs. Suresh Kumar and others, 2017(2) RCR (Civil) 882 and Reepu***

Daman @ Ripu Daman vs. Baldev Singh and another, 2017 (2) PLR 434.

5. I have heard learned counsel for the parties and with their valuable assistance, have gone through the judgments as cited.

6. The core question which arises for determination of this court is whether the instant civil revision is maintainable against the order declining to appoint a Local Commissioner under Order 26 Rule 9 CPC.

7. In the case in hand, the Rent Controller while dismissing the said application for application of a Local Commissioner, has observed that respondents No.1 and 2 herein are alleging three shops in the possession of the petitioners, while the petitioners are claiming the same to be only one shop and this factum can only be proved by the parties by leading positive evidence regarding the same. The Rent Controller also observed that the present application for appointment of local commissioner seems to be an attempt on the part of the petitioners to obtain evidence on their behalf at the hands of the local commissioner.

8. Order 26 Rule 9 CPC, empowers the court to appoint a Local Commissioner to make local investigations, when the court is of the opinion that the same is necessary for the just decision of the case. The object behind this provision is not to collect the evidence on behalf of either of the party, but to elucidate any point, which is left doubtful, after the evidence has been produced before the court.

9. In the case of ***Pritam Singh and another vs. Sunder Lal and others (supra)*** the Division Bench of this court, after referring to the earlier decision of the Division Bench of this court in ***Harvinder Kaur and another vs. Godha Ram and another (supra)*** came to hold that revision

petition under Article 227 of the Constitution of India and under Section 115 CPC against the order dismissing the application for appointment of Local Commissioner is not maintainable. It has also been held that Local Commissioner cannot be appointed to conclude evidence for either of the party. The said ratio of law has been subsequently followed in a number of cases by this High Court. This court finds nothing wrong in the impugned order so passed by the Rent Controller refusing to appoint a Local Commissioner.

10. In view of the above settled position of law, it is held that the instant civil revision is not maintainable and the same is accordingly dismissed.

November 15, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No