

CR No.8580 of 2015 (O&M)

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

**Civil Revision No.8580 of 2015 (O&M)
Date of Decision:10.01.2020**

Mehar Singh

..... petitioner

Versus

Smt. Babita and Ors.

..... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S. Chadha, Advocate
for the petitioner.

Mr. Ashok Kumar Jindal, Advocate
for respondents No.2 and 3.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-petitioner has filed the present revision petition challenging the correctness of order dated 3rd September 2015 passed by Ld. Civil Judge (Junior Division), Karnal declining request of the plaintiff for appointing a Local Commission to record the deposition of Amir Chand-Stamp Vendor, Panipat. The plaintiff has filed a suit for specific performance of the agreement-to-sell dated 11.07.2006. In order to prove his case he wanted to examine Amir Chand-Stamp Vendor, Panipat in evidence. The plaintiff-witness was sought to be summoned along with the record but it was reported that the concerned Stamp Vendor-Amir Chand is sick due to his extreme old age and cannot move out except with the help of someone. It was also reported that he is suffering from forgetfulness.

Keeping in view the aforesaid facts, the plaintiff filed an

application for permission to examine the aforesaid witness through a Local Commissioner. The aforesaid application has been dismissed by the learned trial Court while referring to provisions of order 26 Rule 1 CPC and Section 118 of the Evidence Act.

Learned trial Court has over-looked the amendment made by Act No.22 of 2002 which has been enforced w.e.f. 1st July 2002, providing that the evidence of witness can be recorded either by the Court or by the Commissioner appointed by it. This amendment has been made in Sub-Rule 2 of Rule 4 of Order 18 in order to facilitate expeditious disposal of the suit. It must be remembered that rules of procedures are to advance the cause of justice. Therefore, the rules of procedures have to be interpreted and applied in order to expedite the disposal of the suit. The Stamp Vendor is an independent person. He is reported to be sick being very old. In such circumstances, in the considered view of this Court, the learned trial Court erred in refusing to appoint a Local commissioner for this purpose. Accordingly, the order dated 3rd September 2015 is set aside.

Learned trial Court is requested to appoint Local Commissioner on the charges to be borne by the plaintiff. The plaintiff shall also be liable to pay charges for the visit of the counsel representing-defendant.

Disposed of.

(ANIL KSHETARPAL)
JUDGE

10th January 2020

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No