

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

Sr.No.102

Civil Revision No.702 of 2021

Date of Decision: 23rd March, 2021.

Vikram

...Petitioner

Versus

Veerpal & Others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr.Vipul Sharma, Advocate,
for the petitioner.

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MEENAKSHI I. MEHTA, J.

By way of the present revision petition, the petitioner has assailed the order dated 26.02.2021 (Annexure P-7) passed by learned trial Court directing the Local Commissioner to break open the lock of the suit property so as to ascertain the possession of the parties.

2. Bereft of unnecessary details, the facts culminating in the filing of the instant revision petition, are that respondents No.1 & 2 (the plaintiffs) preferred a Civil Suit against the present revisionist-petitioner and perform respondent No.3 (both arrayed as the defendants) for seeking permanent injunction to restrain the said defendants from interfering in their peaceful possession and also from causing any hindrance in their enjoyment, over the suit property. Vide the order dated 08.02.2021 (Annexure P-5), learned trial Court appointed one Ms. Sunita Malhotra as Local Commissioner with a

direction to her to visit the site in dispute after giving prior notice to both the parties and to report regarding the existing state of affairs in respect thereof. However, vide the report dated 26.02.2021 (Annexure P-6), the afore-named Local Commissioner apprised the trial Court that at the time of her visit to the shop in dispute on 12.02.2021, the shutter of the said shop was found closed and it could not be opened as there was a cemented platform of 2-3 feet in front of the same and a high and heavy wooden table had also been placed in front of the said shop and the employees of defendant No.2 were preparing food on the said table and hence, it was not possible to open the shutter.

3. In pursuance of the said status report, the respondent-plaintiff submitted his affidavit deposing therein regarding the articles which were lying in the shop in dispute before it was closed due to the clamping of nation-wide lockdown. In view thereof, learned trial Court passed the impugned order directing the said Local Commissioner to visit the shop in dispute again and make an inventory of the articles, as itemized in the said affidavit and to submit her report qua the existing affairs of the interior of the shop while further authorizing her to break open the lock to facilitate the submission of her report and in case of any hindrance in the said process, to approach the local police authority for seeking help and also directing the SHO concerned to provide the police aid to her for carrying out the inspection of the spot.

4. I have heard learned counsel for the revisionist-petitioner in the instant revision petition at the preliminary stage and have also gone through

the file thoroughly.

5. Learned counsel for the revisionist-petitioner contends that the trial Court could not direct the Local Commissioner to break open the lock of the disputed shop and to make an inventory of the articles as detailed in the said affidavit as it would amount to the collection of evidence for the respondents-plaintiffs for the purpose of establishing their claim in the said Civil Suit. To buttress his contentions, he has placed reliance upon *Sunil and Others vs. Suresh Kumar & Others*, 2017(2) R.C.R.(Civil) 882; *Surinder Singh vs. Bimal Kumar & Another*, 2017(4) ICC 408; *Ravinder Kumar vs. Union of India & Anr.*, 2019 (4) R.C.R.(Civil) 519; *Union of India vs. M/s Kripal Industries*, 1998 AIR (Rajasthan) 224; *Kuldip Singh & Anr. vs. Davinder Singh & Others*, 2019(3) PLR 527 and *Bakhshish Singh vs. Resham Singh*, 1991(2) RLR 308.

6. However, the afore-discussed contention of learned counsel for the revisionist-petitioner is sans any merit because as discussed in the preceding paragraphs, learned trial Court, while appointing the Local Commissioner vide the order Annexure P-5, had directed her to visit the site in dispute and to report regarding the existing state of affairs qua the same and had not given her any direction to ascertain the possession of any of the parties over the said property. However, the said Local Commissioner submitted her report Annexure P-6, wherein she expressed her inability to open the shutter of the disputed shop as the same was found locked at the time of her visit there and a cemented platform of 2-3 feet was also found to have been constructed in front of the same. In view of this report, learned

trial Court passed the impugned order Annexure P-7 whereby the Local Commissioner was authorised to break open the lock of the said shop and make an inventory of the articles, as mentioned in the affidavit of the respondent-plaintiff and if required, to seek police help for this purpose and no direction was given to her to ascertain the factum of possession over this shop. Moreover, the revisionist-petitioner would be well within his right to file the objections qua the report of the Local Commissioner in case it would adversely affect his right to defend in the said Civil Suit.

7. As regards the afore-discussed citations, as relied upon by learned counsel for the revisionist-petitioner in support of his contentions, the same would not be of any avail to the revisionist-petitioner in view of the observations made by Hon'ble the Supreme Court while rendering the judgment in Civil Arising No.2560 of 2000 (Arising out of S.L.P.(C) No.18012 of 1999) titled as **Rajinder & Co. vs. Union of India & Others** (Law Finder) on 10.04.2000, to the effect that “*the question whether the Commissioner's report is finally acceptable or not would be decided by the Court de hors the order passed by the authority concerned and the High Court cannot interfere with the order of the trial Court appointing the Commission for inspecting the site and to file a report*”.

8. To add to it, in **Ravinder Kumar** (supra) as relied upon by the learned counsel for the revisionist-petitioner, it has been categorically observed in Para No.8 of the judgment that even in a case where the prayer for appointment of Local Commissioner is allowed by the trial Court, the revision is not maintainable. Then, in Para No.9 of the judgment as handed

down in **Surinder Singh** (supra) also, the Single Bench of this Court has specifically observed that two Division Benches of this Court have held that the revision petition against the decision on the application for the appointment of the Local Commissioner is not maintainable and the same is not to be looked into even under Article 227 of the Constitution of India.

9. As a sequel to the fore-going discussion, it follows that the impugned order Annexure P-7 does not suffer from illegality, infirmity, irregularity or perversity and hence, it does not warrant any interference by this Court. Resultantly, the present revision petition is hereby dismissed.

(MEENAKSHI I. MEHTA)
JUDGE

23.03.2021.
seema

Whether speaking/reasoned?	Yes/No
Whether Reportable?	Yes/No