

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

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CR-1069-2022 (O&M)

Date of Decision : 28.03.2022

Ratan Lal and Others

...Petitioners

versus

Seemawati @ Seema Devi and Another

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinay Kumar Pandey, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 26.02.2020 passed by the Court of Civil Judge (Jr. Division), Ferozepur Jhirka, District Nuh whereby the application filed by the defendant-petitioners for appointment of a Local Commissioner has been dismissed.

Learned counsel for the petitioners would contend that the dispute is qua adjoining lands and the appointment of the Local Commissioner for giving the demarcation report would have clinched the issue. Learned counsel has relied upon the judgment passed by this Court in **M/s Allwin Infrastructure Limited, Panchkula Vs. M/s MAXXUS Developers & Ors. [2021(1) RCR (Civil) 177]** and **Banarsi Das Vs. Sardha Ram & Ors. [2015(9) RCR (Civil) 590]** to contend that a revision petition against the order dismissing the application for appointment of Local Commissioner would be maintainable.

I have heard learned counsel for the petitioners.

In the present case, order under challenge is dated 26.02.2020.

The petitioner has come to the Court challenging the said order after a period of over two years. The case is now fixed for rebuttal and arguments before the learned Trial Court. There is no explanation forthcoming for the delay in challenging the impugned order and approaching this Court at the stage of rebuttal and arguments.

The challenge in the present case is to the order dismissing the application for appointment of a Local Commissioner. A Division Bench of this Court in the case of **Pritam Singh Vs. Sunder Lal [1990(2) PLR 191]**, inter-alia held as under:-

“6. After getting through the Judgments cited in the reference order, we do not find that the earlier Judgment in Harvinder Kaur's case (supra) requires any re consideration. The order refusing to appoint a local commissioner does not decide any issue, nor adjudicates rights of the parties for the purpose of the suit and is, therefore, not revisable. The distinction sought to be made by the learned Single Judge in view of the Judgment in M/s Sadhu Ram Bali Ram's case (supra) was clearly noticed by the Division Bench in Harvinder Kaur's case (supra) and it was observed :

“It may be observed that the facts of M/s Sadhu Ram Bali Ram's case were different as in that case the onus of an issue had been wrongly placed and while

deciding that question, it was held that such an order would be revisable.”

Apart from that, placing the onus of an issue has something to do with the rights of the parties whereas refusing to appoint a Commission under Order 26, Rule 9, Code of Civil Procedure, has nothing to do with the rights of the parties as such. It is the discretion of the Court to appoint a Commission there under and if the Court refuses to appoint a Commission, then no right of any party can be said to be prejudiced as such.”

Similar view has been taken by this Court in the case of **Smt. Raksha Devi Vs. Madan Lal & Ors. [2017(3) PLR 249]** wherein it has categorically been held that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner. It is trite that an order refusing to appoint a Local Commissioner does not decide any issue nor does it adjudicate any rights of the parties for the purpose of the suit and hence would not be a revisable order.

The judgments relied upon by the learned counsel for the defendant-petitioners would be of no avail to him inasmuch as in the case of **M/s Allwin Infrastructure Limited, Panchkula** (*supra*) the revision petition was filed challenging the appointment of the Local Commissioner, which was dismissed on merits finding no illegality or infirmity in the impugned order. In the case of **Banarsi Das** (*supra*), though the revision petition was entertained, however, the said judgment is distinguishable on facts. In the present case the defendant-petitioners had every opportunity to

lead their evidence and was well within his right to have filed a demarcation report in his evidence. However, they chose not to do so. Further, the defendant-petitioners did not challenge the impugned order dated 26.02.2020 for two long years and have filed the present revision when the case is at the fag end and is fixed for rebuttal and arguments. This Court, by way of the present petition, cannot permit the filing-up of lacune, if any, in the case on the part of the defendant-petitioners.

In view of the above, I do not find any merit in the present petition, which is dismissed. Pending applications, if any, also stand disposed off.

March 28, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO