

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

CR-1629-2020 (O&M)

Date of decision : 30.09.2022

Sher Singh

... Petitioner(s)

Versus

Neki Ram

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Pratibha Yadav, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed challenging the order dated 04.12.2019 wherein the Trial Court, while dealing with the objections raised by the plaintiff-petitioner herein to the report of the Local Commissioner, has held that the same would be considered after the cross-examination of the Local Commissioner under Order 26 Rule 10 of the Code of Civil Procedure, 1908 (CPC).

Learned counsel for the plaintiff-petitioner would contend that the objections raised by the plaintiff-petitioner should be dealt with at this stage. In support of her contention, she has relied upon the judgment of Hon'ble Supreme Court in the case of **Bhagwat Singh Vs. Madhav Memorial Pathagar & Ors. [2006 (9) SCC 221]**.

Heard.

In the present case, vide the impugned order dated 04.12.2019 the Trial Court has not dismissed the objections of the plaintiff-petitioner herein, however, has held that the same would be considered after the cross-examination of the Local Commissioner.

A Division Bench of this Court in the case of **Balbir Dewan Cold Storage & General Mills Vs. Naveen Chander [1989 (1) PLR 677]** has held as under :

“5. ... In case, any such objections are filed by either of the parties to draw the attention of the Court as to the inherent defects therein, the Court may consider the same and if for any reason dissatisfied with the proceedings of the Commissioner, may direct such further inquiry to be made as it shall think fit but neither of the parties is entitled to claim any issue with respect to the report. The only provisions under Sub-rule 2 of Rule 10 of Order 26 of the Code is to examine the Commissioners personally in open Court either by the Court itself or by any of the parties with the permission of the Court. The objection, if filed by the parties, shall be considered after the cross-examination, if any, of the local Commissioner by the Court under Rule 10 of Order 26 of the Code and that too along with the other evidence at the time of final hearing.”

The judgment referred to by the learned counsel for the petitioner in the case of **Bhagwant Singh** (*supra*) is distinguishable on facts. In the said case the appellant therein had objected to the appointment of the Local Commissioner on the ground that he had earlier been engaged as an advocate by the appellant. In the present case, objections have been filed by the petitioner to the Local Commissioner's report which are yet to be considered.

In view of the law laid down by the Division Bench of this Court in the case of **Balbir Dewan Cold Storage & General Mills** (*supra*), I do not find any illegality or infirmity in the order passed by the Trial Court. The present revision petition, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

It is made clear any observation made herein shall not be treated as an expression of opinion on the merits of the case.

(ALKA SARIN)
JUDGE

30.09.2022
Yogesh Sharma

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