

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

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**CR-2781-2022 (O&M)**  
**Date of Decision : 25.07.2022**

Mahender Kumar and Others

...Petitioners

versus

Seemawati and Others

...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 petitioners for appointment of Local Commissioner has been dismissed.

Learned counsel for the plaintiff-petitioners would contend that the plaintiff-petitioners filed a suit for possession and mandatory injunction directing the defendant-respondents to remove the encroachment made by them on the suit property and to restore the same to its original position. However, the defendant-respondents have denied the encroachment over the suit property and hence it was necessary to appoint a Local Commissioner in order to bring out the existing state of affairs. Vide the impugned order dated 26.02.2020 the application for appointment of the Local Commissioner was rejected on the ground that a Local Commissioner cannot be appointed to collect evidence in favour of one of the parties. The learned counsel for the

plaintiff-petitioners would contend that the case was still at the initial stage and hence the appointment of a Local Commissioner would put the issue at rest.

I have heard learned counsel for the plaintiff-petitioners.

In the present case the suit, as per learned counsel for the plaintiff-petitioners, is still at the initial stage. The Court process cannot be used in order to collect evidence on behalf of either of the parties. There is also no explanation forthcoming for the delay in challenging the impugned order and approaching this Court after a period of over two years.

Further the challenge in the present petition 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.

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

However, it is clarified that any observations made herein shall not be treated as an expression of opinion on the merits of the case and the plaintiff-petitioners shall always be at liberty to lead their evidence in accordance with law.

**March 25, 2022**  
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**(ALKA SARIN)**  
**JUDGE**

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