

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-204-2023

Date of Decision: April 13, 2023

Gurmail Kaur

....Petitioner

Versus

Zora Singh and others

..... Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr.Ivan Singh Khosa, Mr. Shivam Grover and
Ms.Shairon Tyagi, Advocates
for the petitioner.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 22.11.2022 (Annexure P-1), passed by learned lower Court, whereby an application filed by the present petitioner/plaintiff, for appointment of Local Commissioner, for recording of statement of defendant No.5, as witness, was dismissed.

During the pendency of the suit filed for grant of mandatory injunction, the present petitioner/plaintiff had filed an application for appointment of the Local Commissioner for examination of Punjab Kaur wd/o Sarwan Singh, who was impleaded as defendant No.5 before the lower Court and was proceeded against *ex-parte*.

Today, copy of an application filed before learned Lower Court for deposit of the diet money for examination of Punjab Kaur (defendant

No.5) as witness, has been supplied by learned counsel for the petitioner and the same is taken on record.

It is submitted by learned counsel for the petitioner that no order for summoning on the aforesaid application was passed by learned Lower Court. Rather, endorsement was made on the application itself and it was stated by the Court that the witness be produced at own responsibility.

In the light of the same, it is submitted that since the witness intended to be examined was already impleaded as defendant No.5 and had been proceeded against *ex-parte* and that interest of the petitioner is at clash with defendant No.5, therefore, it was not possible for the petitioner to produce the said witness, at her own responsibility. In these circumstances, an application was filed for appointment of Local Commissioner for recording of the statement of Punjab Kaur as witness, who is defendant No.5 and who is an aged lady. Copy of the said application is Annexure P-4 and the said application has been declined vide the impugned order (Annexure P-1).

Keeping in view the aforesaid fact situation, it is quite obvious that it was beyond the control of the petitioner/plaintiff to produce said defendant No.5, as witness, at her own responsibility. Consequently, the said application for appointment of Local Commissioner for examination of the said witness was filed.

Now, at this stage, learned counsel for the petitioner submits that interest of the petitioner would be taken care of, if learned Lower Court is directed to summon the said witness.

The submission, so made, by learned counsel for the petitioner is quite genuine and the purpose of the petitioner will be served, if the witness, Punjab Kaur, who is also defendant No.5, is summoned through the medium of Court.

As such, the instant revision petition is hereby accepted and the impugned order dated 22.11.2022, is hereby set aside. However, the petitioner is directed to file an application before learned Lower Court, for summoning of defendant No.5, Punjab Kaur, through medium of Court and learned Lower Court is expected to summon the said witness, in accordance with law and secure the service of Punjab Kaur, for her examination, as a witness.

April 13, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No