

In the High Court of Punjab and Haryana at Chandigarh

112

CR-2301-2023 (O & M)

Date of Decision: APRIL 20, 2023

M/S ROYAL INDUSTRIES

.....PETITIONER

VERSUS

**M/S NATIONAL STEEL ROLLING MILLS
AND ORS**

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr.Avnish Mittal, Advocate for the petitioner.

Mr. Gaurav Datta, Advocate for the respondents.

ANUPINDER SINGH GREWAL, J (ORAL)

The petitioner has challenged the order dated 17.03.2023 whereby the trial Court has appointed Local Commissioner to inspect the premises and submit a report about the existing position.

Learned counsel for the petitioner submits that the local commissioner had been appointed at the very outset even before framing of issues. Local Commissioner ought not to be appointed to collect the evidence for any party. In support of his submissions, he has relied upon the judgments of this Court in the cases of **Baljinder Kaur and others versus Kulwant Kaur and others, 2021 (2) LAR 456; Sunil and others versus Suresh Kumar and other, 2017 (2) RCR (Civil) 882; Banarsi Dass versus Sunita Rani @ Sarita Rani and others, 2017 (2) RCR (Civil) 274** and judgment of the Madras High Court in the case of **Rangasamy versus The Superintending Engineer, Tamilnadu Electricity Board, Meetur Electricity System, Meetur Dam, Salem District and others, 2007 (5) RCR (Civil) 68.**

Issue notice to the respondents.

Mr. Gaurav Datta, Advocate has put in appearance on behalf of the respondents and submits that appointment of Local Commissioner was necessary for determining the controversy at hand. The issue is with regard to receiving the physical possession of the demised premises which had been leased out and the current status of the machinery and other equipment. He submits that the the Local Commissioner can be appointed even before the evidence is led by the parties if it is necessary for the adjudication of the case. In support of his submission, he has relied upon the judgment of this Court in the case of **Mohd. Ismail @ Ismaila (deceased thr. Lrs.) versus Anil Kumar Goyal (Modi), 2023 (2) RCR (Civil) 437.**

Heard.

The respondents are stated to have leased out the property along with machinery to the petitioner vide lease deed dated 28.08.2019 for a period of 03 years. The petitioner had filed a suit for mandatory injunction directing the defendants to take actual physical possession of the premises. The respondents had also filed a counter-claim for damages as it was alleged that the leased building and machinery has been damaged by the petitioner/plaintiff. Both the suit and the counter-claim are being tried together by the trial Court. The trial Court by the impugned order has appointed Local Commissioner to inspect the premises and prepare a report with regard to the current status of the property in question and the list/condition of articles and machinery. The question which arises for determination before the trial Court is whether the demised premises which had been leased out by the defendants/respondents to the petitioner/plaintiff are in a damaged condition or not.

In terms of the lease deed executed between the parties, a list of inventory including the machinery and tools which were existing in the premises was prepared and annexed as Annexure-'A' to the lease deed. The judgments relied upon by the counsel for the petitioners are distinguishable on facts and not applicable to the instant case.

There is no denying the proposition of law that the Local Commissioner ought not to be appointed to help the parties in collecting evidence. However, in the instant case, the Local Commissioner has been appointed only to prepare a report about the existing status of the premises which had been leased out and his report would facilitate the Court in the adjudication of the matter. There is no absolute proposition of law that Local Commissioner could not be appointed before the evidence stage. Reference can be made to the judgment of this Court in the case of **Mohd. Ismail @ Ismaila (supra)** wherein the order of the trial Court appointing Local Commissioner to ascertain the status of the property before any evidence had been led by the parties was upheld.

Consequently, I do not find any illegality in the impugned order which would warrant interference while exercising jurisdiction under Article 227 of the Constitution of India.

At this stage, learned counsel for the petitioner submits that in a suit which had been instituted between the parties, at an earlier stage Mr. Naveen Verma, Advocate had been appointed as a Local Commissioner and he may be appointed as a Local Commissioner in the instant case so as to avoid contradictory reports.

Learned counsel for the respondents submits that he has no objection if Mr. Naveen Verma, Advocate is appointed as a Local Commissioner in the instant case as well.

With the consent of the counsel for the parties, Mr. Naveen Verma, Advocate is appointed as Local Commissioner in terms of the order passed by the Trial Court on 17.03.2023.

The petition stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

April 20, 2023
A.Kaundal

Whether speaking/ reasoned : Yes/No
Whether Reportable : Yes/No