

CR-2588-2023 (O&M)

108

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2588-2023 (O&M)

Date of decision: April 28, 2023

Gurvinder Singh @ Aman

....Revisionist

versus

Phoolwati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Kul Bhushan Sharma, Advocate for revisionist.

ARUN MONGA, J. (ORAL)**CM-7658-CII-2023**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petition herein *inter alia* is for setting aside impugned order dated 24.04.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurugram, whereby fee of Local Commissioner was assessed on the application of plaintiff-respondent for appointment of Local Commissioner.

2. The revision petition is premised on the averments that respondents No.1 and 2 filed suit for mandatory injunction directing defendant No.1-revisionist not to collect rent and further not to interfere in the tenancy of tenant with consequential relief of permanent injunction restraining defendant No.1 from interfering in collection of rent from tenant and from forcibly evicting tenants from the tenanted premises in question.

2.1. Respondent No.1 filed an application for appointment of Local Commissioner, which was allowed vide order dated 22.03.2023 (Annexure P-6). Petitioner filed CR-1994-2023 against said order dated 22.03.2023. Vide order dated 29.03.2023 (Annexure P-7), aforesaid order was set aside directing learned trial Court

CR-2588-2023 (O&M)

to pass fresh orders on the application *qua* appointment of Local Commissioner and also observing that said order was wholly silent about quantum of fee of Local Commissioner. Vide impugned order dated 24.04.2023 (Annexure P-1), learned trial Court only fixed the fee of Local Commissioner directing to visit suit property on 01.05.2023.

3. Learned counsel for revisionist/defendant would contend that learned trial Court has not decided application for appointment of Local Commissioner on merits and has only fixed fee @ Rs.7,000/-directing respondents No.1 and 2/plaintiffs to pay the same and further *inter alia* directing Local Commissioner to visit the suit property and prepare detailed report. He would also contend that since earlier order dated 22.03.2023 (Annexure P-6) appointing Local Commissioner was set aside by this Court vide order dated 29.03.2023 (Annexure P-7) passed by this Court, impugned order dated 24.04.2023 (Annexure P-1) would tantamount to collecting evidence, which is impermissible.

4. I have heard learned counsel for revisionist and perused the case file.

5. Impugned order dated 24.04.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurgaon, is premised, *inter alia*, on the following reasoning:

“Arguments on the application for appointment of local commission have again been heard. The Hon'ble Punjab and Haryana High Court vide order dated 29.03.2023, had directed this court to pass a fresh order on the application for appointment of local commission observing therein that this court failed to assess the quantum of fee of the local commissioner and as to whom will the pay same. The Hon'ble High Court also observed that this court ought to have itself fixed the fee for local commission and should have also specified as to whom would be paying same.

In view of the observations of the Hon'ble Punjab and Haryana High Court, now the only question which is left to be decided by this court is how much the fee of the local commission would be and who would pay the same.

Since the application for appointment of local commission was filed by the plaintiff and she herself prayed for appointment as such, it is the plaintiff who should pay the fee of the local commission. Accordingly, the local commission fee is hereby assessed as Rs. 7,000/- to be paid by the plaintiff herself.

The Local Commission would visit the suit property on 01.05.2023 and would prepare a detailed report ascertaining whether the suit property has been given on rent and if given on rent, who are the tenants in the said property. The local commission is also directed to enquire and verify who are staying in the property and in what capacity they had been staying as such if not as tenants. A detailed report be filed on or before 11.05.2023. The defendant no. 1 is directed to comply with instruction of local commission and to do the needful to facilitate the preparation of report.”

6. I am unable to persuade myself to agree with the contention that vide impugned order dated 24.04.2023 (Annexure P-1), though fee of the Local Commissioner has been assessed, but Local Commissioner has not been named therein. No doubt, on first blush reading of the impugned order seem to reflect that Local Commissioner’s name is not there. But the import of the order read with earlier order of appointment of Local Commissioner dated 22.03.2023 (though set aside) clearly reflects that learned trial Court while assessing fee has not changed the Local Commissioner and pursuant to the order dated 29.03.2023 (Annexure P-7) passed by this Court, has merely assessed the fee.
7. In the premise, since learned trial Court in its discretion and wisdom has deemed it appropriate to continue with earlier Local Commissioner after assessing fee pursuant to the order passed by this Court, having heard arguments of learned counsel for revisionist, there is no room for interference in the aforesaid valid reasons recorded by learned Court below.
8. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
9. Dismissed.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 28, 2023

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No