

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.5426 of 2022

Date of Decision : 20.01.2023

Central City Welfare Society

....Petitioner

VERSUS

Didar Singh Dhillon & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sushant Kareer, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

The present revision petition under Article 227 of the Constitution of India has been preferred against order dated 14.10.2022 passed by the Trial Court whereby the application filed by the plaintiff-petitioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC') for appointment of a Local Commissioner has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for permanent injunction for restraining the defendant-respondent nos.1 to 4, their hires or servants from demolishing the boundary walls of colony Central City on northern and eastern side as shown in red colour in the site plan. The defendant-respondent nos.1 to 4 filed a written statement denying the averments made in the plaint by the plaintiff-petitioner.

During the pendency of the suit, the plaintiff-petitioner filed an application under Order XXVI Rule 9 CPC for appointment of a Local Commissioner averring therein that there exists a boundary wall around the colony and for ascertaining the actual and factual position at the spot qua the boundary wall the appointment of a local commissioner would be necessary.

The defendant-respondent nos.1 to 4 filed a reply stating therein that the plaintiff-petitioner has moved the present application with *mala fide* intention to collect evidence by way of appointment of a local commissioner. The application was dismissed by the Trial Court vide the impugned order. Hence, the present revision petition.

Learned counsel for the plaintiff-petitioner would contend that the appointment of a local commissioner is necessary in order to determine the actual and factual position at the spot qua the boundary wall around the colony.

I have heard learned counsel for the plaintiff-petitioner.

In the present case the plaintiff-petitioner has approached the Court by filing a suit for permanent injunction for restraining the defendant-respondent nos.1 to 4, their hires or servants from demolishing the boundary walls of colony Central City on northern and eastern side as shown in the site plan. During the pendency of the suit an application was filed by the plaintiff-petitioner for appointment of a local commissioner on the ground that report *qua* the actual and factual position at the spot qua the boundary wall is required. The plaintiff-petitioner in the present case is yet to prove his case by leading evidence. What in fact the plaintiff-petitioner is wanting is for the Court to collect evidence for him, which cannot be permitted.

A Division Bench of this Court in the case of **Pritam Singh & Anr. vs. Sunder Lal & Ors. [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 by the Division Bench of this Court in case of **Pritam Singh** (*supra*) holding that no revision would be maintainable against an order dismissing an application for appointment of a local commissioner as the 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, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

20.01.2023
jk

(ALKA SARIN)
JUDGE

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