



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(112)

CM-15267-CII-2024 in/and
CR-1124-2023 (O&M)
Date of Decision: - 09.09.2024

Hatim Singh

....Petitioner

Versus

Tejpal

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.K. Choudhary, Advocate,
for the applicant-petitioner.

VIKAS BAHL, J. (ORAL)

CM-15267-CII-2024

1. This is an application filed under Section 151 CPC for preponement of the date of hearing in the main case from 28.01.2025 to some early date of hearing.

2. For the reasons mentioned in the present application, the same is allowed and the main case is preponed from 28.01.2025 to today.

CR-1124-2023

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 08.12.2022 (Annexure P-5) passed by the Civil Judge (Sr. Division), Palwal, whereby the application (Annexure P-3) filed under Order 26 Rule 9 CPC by the petitioner for appointment of Local Commissioner was dismissed.

2. The petitioner who is the plaintiff had filed a suit for

possession and permanent injunction in the year 2017. An application was filed by the petitioner for appointment of Local Commissioner. The Civil Judge (Senior Division), Palwal vide order dated 08.12.2022 dismissed the said application by observing that the petitioner was wanting the Court to collect evidence for him which was not permissible and further observed that the question of possession is to be determined by the Court and not by the Local Commissioner.

3. Learned counsel for the petitioner has very fairly submitted that the present case is now fixed for rebuttal evidence and arguments.

4. The Division Bench of this Court in the case of “**Pritam Singh Vs. Sunder Lal**”, ***reported as 1990 (2) PLR 191*** had observed that 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. Learned Single Judge, vide judgment dated 18.07.2022 passed in ***Civil Revision No.2752 of 2022*** in case titled as “**Harchand Vs. Karambir Singh and another**”, by placing reliance upon the above-said judgment of Division Bench and also the judgment of the learned Single Bench in “**Raksha Devi Vs. Madan Lal and others**”, ***reported as [2017 (3) PLR 249]***, had observed that no revision would be maintainable against an order dismissing an application for appointment of a Local Commissioner. The relevant portion of the said judgment in **Harchand's case (supra)** is reproduced as under: -

“4. Learned counsel appearing on behalf of the plaintiff-petitioner has contended that the appointment of the Local Commissioner would be necessary in order to bring on record the existing position of the suit property.

5. *Heard.*

6. *In the present case the challenge 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 going through the judgments cited in the reference order, we do not find that the earlier judgment in Harvinder Kaur's case (supra) requires any reconsideration. 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.”

7. *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.

8. *In view of the law laid down by the Division Bench of this Court, I do not find any illegality or irregularity in the order passed by the Court below.*

9. *The revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.”*

5. In view of the law laid down in the above-said judgments, the present revision petition is not maintainable and the same is accordingly dismissed.

September 09, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes