



RA-CR-85-2024 in
CR-1647-2024 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RA-CR-85-2024 in
CR-1647-2024 (O&M)
Decided on: 20.08.2024**

**GRAM PANCHAYAT OF VILLAGE MAJRA (RAIL MAJRA)
THROUGH ITS ADMINISTRATOR/SARPANCH**

...Petitioner

Versus

RAVINDER KAUR AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Saurav Bhatia, Advocate and
Mr. Kuljinder Singh Billing, Advocate
for the applicant/respondent(s).

Mr. Roopak Bansal, Advocate
for the non-applicant/petitioner.

RITU TAGORE, J.

1. This order shall dispose of the review petition, filed under Order 47 Rule 1 of Code of Civil Procedure, 1908 (for short referred to as 'CPC'), seeking review of the order dated 22.03.2024, passed by this Court in CR-1647 of 2024 titled 'Gram Panchayat of village Majra (Rail Majra) Vs. Ravinder Kaur and others, whereby the revision petition preferred against the order dated 03.01.2024 (Annexure P-5), was allowed and order dated 03.01.2024 (Annexure P-5) was set aside, with direction to the learned trial Court to decide the application for appointing Local Commissioner afresh in the light of reasoning given in the order.



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2. The review petition has been filed by Ravinder Kaur, respondent No.1 and the LRs of deceased Kuldeep Singh, respondent No.2.

The review petition has been filed, inter alia on the grounds that-

i. the revision was filed against a dead person namely Kuldeep Singh, respondent No.2. The revision against a dead person is not maintainable. It is a nullity.

ii. The petitioner-Gram Panchayat was aware of the death of Kuldeep Singh, respondent No.2, prior to filing of the revision petition, on 07.03.2024 because the application for impleadment of LRs of deceased Kuldeep Singh had already been allowed by the learned trial Court vide order dated 17.12.2021, on account of no objection recorded on behalf of the counsel for the petitioner-Gram Panchayat. The petitioner-Gram Panchayat concealed the factum of the death of the respondent No.2, Kuldeep Singh from this Court in the revision petition. On this score alone, the order dated 22.03.2024 is required to be reviewed.

iii. The revision against the order for refusing to appoint a Local Commissioner is not maintainable. Further, in the written statement filed by Gram Panchayat, it has been categorically mentioned that demarcation of the suit property had already been conducted. Therefore, there was no need for fresh demarcation with the help of a Local Commissioner. The application for appointment of Local Commissioner was not maintainable. Further, the application was filed to collect evidence, which is impermissible under the law. The learned trial Court had rightly dismissed the application.

iv. The revision petition on behalf of Gram Panchayat was not filed by a duly authorized person.



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3. The learned counsel for the applicants reiterated the arguments in his submissions, to state that order dated 22.03.2024 is required to be reviewed on the grounds detailed in the application. In support of his arguments, learned counsel referred to **Haryana Saket Council, Chandimandir Vs. Jagan Nath, 1995 (2) CurLJ 424, Harvinder Kaur and another Vs. Godha Ram and another, 1979 HLR 30, Ravinder Kumar Vs. Union of India and another, 2019 (4) RCR (Civil) 519, Pritam Singh and another Vs. Sunder Lal and others, 1990(2) PLR 191, Balwinder Kumar and others Vs. Om Parkash and others, CR-533 of 2020 and Rajiv Kumar Batra Vs. Kashmiri Lal Sika, 2010 (1) PLR 195.**

4. Contrarily, learned counsel for the non-applicant/Gram Panchayat submits that no ground to review the order dated 22.03.2024 is made out. It is stated that no general rule can be laid down that in no case revision would lie against the order passed under Order 26 CPC. The learned counsel submits that Order 26 Rule 9 CPC read with Order 39 Rule 7 CPC gives ample power to the Court to appoint a Local Commissioner to make local investigation, which is necessary for the purpose of just decision of the case. In support referred to **Malwinder Singh Vs. Maninder Singh and others, 2021 (2) RCR (Civil) 849.**

5. Learned counsel submits that the non-impleadment of the LR's of Kuldeep Singh, respondent No 2, in the revision No.1647 of 2024, occurred due to non-incorporation of the names of the LR's of deceased Kuldeep Singh, respondent No.2 in the memo of the parties, filed before the learned trial Court, which is evident from the certified copy of the impugned order dated 03.01.2024. The same was relied upon by the petitioner in the



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revision petition (Annexure P-5). Given the facts, learned counsel submits that it was not concealment on the part of the petitioner-Gram Panchayat.

6. Learned counsel further submits that applicants, instituted a suit for permanent injunction against the petitioner-Gram Panchayat, through its Administrator/Sarpanch. A resolution dated 28.06.2019, authorizing the Sarpanch to defend the case on behalf of the petitioner-Gram Panchayat was passed. Learned counsel submits that based on the said resolution, the revision was filed through Sarpanch, Daulat Ram. To support his contentions, learned counsel placed on record the photocopy of resolution dated 28.06.2019. However, learned counsel for the petitioner-Gram Panchayat, concedes that there is no separate authorization in favour of the Sarpanch, indicating that he was authorized to file the revision petition. However, contends that this irregularity does not constitute sufficient ground for the review of the order. Learned counsel further submits, applicants have failed to show any prejudice was caused to them with passing of order under review. A prayer is made to dismiss the application.

7. I have considered the submissions of the learned counsel for the parties and have gone through the record.

8. It is a matter of record that Gram Panchayat of village Majra (Rail Majra), through its Administrator/Sarpanch, Daulat Ram filed the revision petition bearing No.1647 of 2024 titled 'Gram Panchayat vs. Ravinder Kaur and others', under Article 227 of the Constitution of India against the applicants– respondents, challenging the order dated 03.01.2024, passed by learned Civil Judge (Junior Division), Balachaur, District SBS Nagar, thereby dismissing the application, moved by the petitioner/Gram



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Panchayat, for appointment of Local Commissioner in Civil Suit No.257 of 2018 titled 'Ravinder Kaur and another Vs. Gram Panchayat and another'. This Court while allowing the revision petition passed the following order on 22.03.2024: -

“9. To the considered opinion of this Court, the approach of learned trial Court was flawed in rejecting the application for the reasons that the provisions of Order 26 Rule 9 CPC and Order 39 Rule 7 CPC empowers the Court to issue a commission for local investigation, which may be necessary to elucidate any matter in dispute. Although, the object of Local Commissioner is not to collect evidence, which can be taken in the Court, but rather to obtain such evidence, which from its peculiar nature, can only be had on the spot with a view to explicate any point left doubtful by the evidence produced before the Court. The aforesaid power can be exercised by the Court even suo moto, if in the facts and circumstances of the case, it is deemed necessary that a local investigation is required and is appropriate for illuminating any matter in dispute, thus facilitating a complete adjudication of the case. The aforesaid provisions do not inhibit the Court to exercise such power at any stage of the case.

10. In the present case, resolving the issue of interference in the property of respondent No.1 and 2 allegedly by the plaintiff, or encroachment claimed by the petitioner upon the alleged passage could be resolved if the suit land of the respondent No. 1 and 2, and the passage which admittedly runs on the western side of the property of respondents No.1 and 2, can be demarcated. In this regard, a spot inspection report would surely help and assist the Court to resolve the controversy effectively, completely and judiciously. In given facts, to the mind of this Court, appointment of local commissioner does not amount collecting evidence for either of the parties to the lis.

11. In view of the facts and circumstances and the discussion made above, the impugned order dated 03.01.2024 (Annexure P-5) passed by learned Civil Judge (Junior Division), Balachaur, District SBS Nagar does not stand judicial scrutiny and is liable to be set aside and same is set aside with further direction to the learned trial Court to decide the application (Annexure P-3) for appointment of Local Commissioner, afresh in light of the above reasoning.”



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9. Being aggrieved by the aforesaid order, the applicants have filed this review petition.

10. As far as the maintainability of revision petition, against the order refusing to appoint Local Commissioner is concerned, the Division Bench of this Court, in **Harvinder Kaur case (supra)** observed that non-maintainability of a revision petition against an order appointing a Local Commissioner for purpose of demarcation cannot be laid down as a general rule. In para 13 of this judgment, it was observed as follows: -

“13. Before parting with the judgment, it may, however, be made clear that it cannot as a general rule be laid down that in no case a revision would lie against an interlocutory order passed under any other provision of Order 26, and that it would be on the facts of each case that it will have to be found out whether the interlocutory order, against which a revision is sought to be filed, has adjudicated for the purposes of the suit some right or obligation of the parties in controversy or not.”

11. In view of the above, the revision cannot be said to be unmaintainable in every case of refusal to appoint a Local Commissioner. It would depend upon the facts of each case. The authorities **Ravinder Kumar ; Pritam Singh and another; Balwinder Kumar and others and Rajiv Kumar Batra** are of no help to the learned counsel for the applicants as in aforesaid judicial precedents, reliance has been placed on **Harvinder Kaur case (supra)**. As noticed above, non-maintainability of the revision petition has been ruled out to be fact-specific in each case.

12. The contention of the learned counsel for the applicants that demarcation of the suit property had already been resorted to by the petitioner/Gram Panchayat. It is mentioned in para No.2 on merits of the written statement, therefore, appointment of the Local Commissioner for



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second time is misuse of the provisions of law. The perusal of the written statement filed by Gram Panchayat would indicate that said demarcation was carried out by the authorities on the complaint made by the inhabitants of village. No prior demarcation was carried out in the suit filed by the applicants against the petitioner/Gram Panchayat and others. So, it is not the case of filing a second application for appointment of Local Commissioner. Furthermore, the provisions under Order 26 CPC do not bar appointment of Local Commissioner for more than once.

13. Now, coming on the plea of filing the revision petition against a dead person, Kuldeep Singh, respondent No.2 and purposeful concealment of his death from this Court by petitioner/Gram Panchayat. The certified copy of the order dated 03.01.2024 placed on record and the true typed copy of said order, placed as Annexure P-5 on the record, indicates that the name of the LRs of Kuldeep Singh, were not incorporated in the memo of parties, that led to the filing of revision petition against deceased, Kuldeep Singh. To the considered opinion of this Court, this was not a purposeful concealment on the part of petitioner but a mistake that occurred due to the reasons explained above. Further, the revision petition was not filed against a sole respondent Kuldeep Singh, since deceased. It was filed against two contesting respondents namely Ravinder Kaur and Kuldeep Singh. In these circumstances, revision cannot be taken to be a nullity. Now, in this review petition, the LRs of deceased Kuldeep Singh has been brought on record.

14. Another plea taken to review the order dated 22.03.2024, is that the revision was not filed by a duly authorized person. It is stated that at the relevant time Gram Panchayat had been dissolved. To support his contention



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the counsel for the applicants placed on record the notification dated 27.02.2024, issued by Additional Chief Secretary to Government of Punjab, Department of Rural Development and Panchayats. It is contended that no authority letter is placed on record, to show that Daulat Ram was authorized to file the revision on behalf of the Gram Panchayat.

15. On the other hand, learned counsel for the petitioner Gram Panchayat submits that vide resolution dated 28.06.2019, the authorization was given to the Sarpanch of the Gram Panchayat to defend the case on behalf of the Gram Panchayat. However, learned counsel for the petitioner/Gram Panchayat concedes that no separate authorization was taken to file the revision.

16. Although, revision petition, filed on 03.03.2024 through Administrator/Sarpanch, Daulat Ram, did not have the authorization to file the petition on behalf of the Gram Panchayat yet in the given facts there appears nothing on record to suggest that right/interest of Gram Panchayat, have been jeopardized on account of aforesaid irregularity, or any prejudice has been caused to the applicants, on account of this technical defect in the revision. Therefore, this irregularity certainly cannot be made the ground for review of the order dated 22.03.2024.

17. Now coming on the grounds on which review is maintainable. The following are some of the grounds on which review is maintainable; they, *inter alia*, are i). discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the petitioner or could not be produced by him; ii). Mistake or error apparent on the face of the record; or any other sufficient reason. However, the review



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will not be maintainable when there is minor mistake of inconsequential import; ii) review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or result in miscarriage of justice. iii) Mere possibility of two views on the subject cannot be a ground of review and review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

18. The case of the applicants does not fall within the above quoted material circumstances calling for the review of the order dated 22.03.2024. Further, learned counsel for the petitioner, could not dispute that the provisions of Order 26 Rule 9 and Order 39 Rule 7 CPC, clearly provide that for the purpose of elucidating any matter in dispute, the Court may issue a commission to make an investigation and give the report. The order under review expounds the above material legal proposition, which is applicable to the given facts of the case. In view of the discussion, the case law as cited by the counsel for the applicants has failed to advance the cause of the applicants.

19. As a sequel to the above discussion, no ground is made out to review the order.

20. Review application stands dismissed.

21. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

20.08.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No