

**CR-3119-2024 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****125****CR-3119-2024 (O&M)
Date of decision : 21.05.2024**

Vikas Sharma

... Petitioner(s)

Versus

Ram Mehar Sharma and Others

...Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajnikant Upadhyay, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present civil revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 18.11.2023 (Annexure P-4) passed by the Civil Judge (Junior Division), Sonapat whereby the application filed by the plaintiff-petitioner for appointment of a Local Commissioner has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for rendition of accounts against the defendant-respondents wherein a power of attorney was filed on behalf of defendant-respondents No.1 to 3 on 01.05.2023. The plaintiff-petitioner has an apprehension that defendant-respondent No.1 is not mentally and physically fit to file his power of attorney and his thumb impression on the said power of attorney has been forged by defendant-respondent Nos.2 and 3. During

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the pendency of the suit, the plaintiff-petitioner filed an application under Order 26 Rule 9 of CPC for seeking appointment of a Local Commissioner. Reply was filed to the said application stating therein that the defendant No.1 is mentally fit and has willfully signed his power of attorney. The Trial Court dismissed the said application vide order dated 18.11.2023. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that for ascertaining the factual position the appointment of a Local Commissioner was necessary and the application has wrongly been dismissed by the Trial Court vide the impugned order dated 18.11.2023.

4. Heard.

5. 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 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



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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."

6. 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



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order.

7. 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.

8. The revision petition is accordingly dismissed.

21.05.2024
Ankur

(ALKA SARIN)
JUDGE

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