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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(125)

CR-2744-2025

Date of Decision: - 06.05.2025

Sukreet Kumar

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Mohan Singla, Advocate,
for Mr. Vishal Malik, Advocate
for the petitioner.

Mr. Jagdish Manchanda, Addl. A.G., Haryana
for respondents No.1 and 2.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India read with Section 115 CPC for setting aside the impugned order dated 21.02.2025 (Annexure P-1) passed by the Civil Judge (Junior Division), Panipat, whereby the application dated 13.02.2025 (Annexure P-4) moved by the petitioner/plaintiffs for appointment of local commissioner, by virtue of provisions enshrined under Order 26 Rule 9 of CPC has been declined.
2. Learned counsel for the petitioner has submitted that in the present case, the petitioner had filed a suit for declaration to the effect that the building constructed by defendants No.4 to 6 over plot No.441-R,

Model Town, Panipat is illegal and had further sought mandatory injunction directing the defendants No.1 to 3 to demolish the alleged illegal construction and also to compensate the plaintiffs and for the said purpose, it is necessary to appoint the local commissioner. It is further submitted that the application filed by the petitioner for appointment of the local commissioner has been illegally dismissed by the trial Court vide order dated 21.02.2025 (Annexure P-1) which order deserves to be set aside and the application filed by the petitioner, being meritorious, deserves to be allowed.

3. A perusal of the order dated 21.02.2025 (Annexure P-1) would show that the trial Court had, after taking into consideration the pleadings of the parties, observed that it is for the plaintiffs to prove their case by leading independent evidence and the Court cannot collect evidence on their behalf. It had further been observed that what the plaintiffs were wanting through the medium of the court was to collect evidence by appointing a local commissioner, which can very well be done by the plaintiffs by leading their independent evidence. It had also been observed that any report regarding existing construction, assessment of loss to the plaintiffs, estimated costs, estimated time and whether property is fit for habitation or not, would amount to collection of evidence in favour of a party, which would be injustice to the other party. In the said order, reference was made to a judgment of Co-ordinate Bench of this Court in case of “***Banarsi Dass Vs. Sunita Rani, reported as (2017) 2 RCR (Civil) 274***, in which, it was observed that the local



commissioner cannot be appointed for the purpose of collection of evidence. The impugned order passed by the trial Court is in accordance with law and deserves to be upheld.

4. It would be relevant to note that 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. The provision of Order 26 Rule 9 CPC is reproduced hereinbelow:-

“9. Commissions to make local investigations.—*In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court **may** issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court;*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

A perusal of the said provision would show that the same provides that it is within the power of the Court to issue a Commission to such person as it thinks fit, to make an investigation on some aspect. A further reading of the said provision would show that there is no right vested in favour of a party to get the said commission issued and rather the same is an enabling provision that enables the Court to appoint a Commissioner if it is of the opinion that the same is required in a case.

6. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned order has been correctly passed



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and deserves to be upheld and the revision petition being meritless,
deserves to be dismissed and is accordingly, dismissed.

May 06, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No