**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****CR-245-2022 (O&M)****Date of decision: 12.05.2026****Kuldeep Singh****...Petitioner(s)****Vs.****Balwinder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Vipin Mahajan, Senior Advocate with
Ms. Tejinder Kaur, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the petitioner/judgment debtor against the order dated 27.10.2021 (Annexure P-5); whereby Local Commissioner was appointed to note down the actual and factual position of the suit property.

2. Brief facts of the case in chronological order are as follows: -

03.01.2007: The respondent/plaintiff had filed a Civil Suit for permanent injunction on dated 03.01.2007.

20.08.2008: Vide judgment and decree dated 20.08.2008 (Annexure P-2), suit of the plaintiff was decreed in the following manner: -

"11. Relief:



In view of my findings on above said issues the suit of the plaintiff succeeds and is hereby decreed with costs for restraining the defendants from encroaching upon the public street marked as ADEF shown in the site plan and also raising any obstruction in the outgress and ingress from the street and also restraining the defendant from dismantling the gate of the house of the plaintiff: no:1- Installed near point X by the plaintiff no 1 and houses of plaintiff No.1 marked as ABCD shown in the site plan-Illegally and forcibly without due course of law. Decree sheet be prepared and file be consigned to the record room."

27.10.2021: As petitioner failed to comply with the injunction, respondent had filed an application dated 27.10.2021 (Annexure P-3) under Order 21 Rule 32 CPC for initiating contempt proceedings against the petitioner for intentionally and wilfully violating the judgment and decree dated 20.08.2008.

27.10.2021: On 27.10.2021, the respondent also filed an application (Annexure P-4) under Order 26 Rule 9 CPC for ex-parte appointment of Local Commissioner.

27.10.2021: Vide impugned order dated 27.10.2021 (Annexure P-5), the said application of the respondent has been allowed.

3. Hence, present Revision Petition.

4. It is *inter alia* submitted by learned counsel for the petitioner/judgment debtor that, the Civil Suit was decreed exparte as far back as on 20.08.2008; whereas the Execution Petition has been filed



13 years thereafter, on 27.10.2021. It is contended that on this short ground itself, the Execution Petition ought to have been dismissed.

5. It is further submitted that the said Execution Petition was not maintainable as the respondent has withheld the material facts from the Executing Court *in-as-much* as the respondent has failed to disclose that the petitioner and the respondent had entered into a Compromise dated 25.01.2007 (Annexure P-1); whereby the parties had undertaken that they shall withdraw all Court cases which are going on between the parties. Learned counsel submits that accordingly, the petitioner was under the impression that in terms of the Compromise, the respondent would have withdrawn Civil Suit for permanent injunction. However, respondent at his back failed to do so, which resulted in passing of the exparte decree dated 20.08.2008. It is contended that therefore, petitioner was not aware of the said decree.

6. It is further submitted that keeping in view the fact that the Execution Petition had been filed after more than 13 years, therefore, it was a mandatory duty of the learned Executing Court to issue notice to the petitioner before proceeding further. However, Executing Court has proceeded to appoint Local Commissioner without even issuing notice to the petitioner. Learned counsel contends that in terms of Order 21 Rule 22 CPC, it is mandated that notice is required to be issued by the learned Executing Court if execution is filed after expiry of more than 2 years from the date of decree. Thus, the learned Executing Court has



committed material illegalities while proceeding with the execution application resulting in serious miscarriage of justice.

7. Learned counsel further contends that petitioner has never violated any decree. Petitioner is owner in possession of the house in question alongwith the alleged street. There is no document on record to establish that the alleged street is public street; and rather in the compromise dated 25.01.2007 with the Gurbachan Singh-plaintiff No.1 in the alleged suit, the compromise itself recognizes the right of the petitioner over the alleged street in question and Gurbachan Singh has taken a sum of Rs.25,000/- also and has undertaken to withdraw the civil suit and all applications. As such, the learned Executing Court was required to call for the response from the petitioner and then to frame issues to establish on record as to whether there is violation of the decree dated 20.08.2008 or not? Before framing of issue and before calling upon the parties to lead evidence it cannot be presumed or imagined that there is any violation of the decree necessitating exparte appointment of Local Commissioner. As such, the entire approach of the learned Executing Court is completely contrary to the law.

8. Learned counsel for the petitioner further submits that the learned Executing Court while appointing the Local Commissioner specifically directed the Local Commissioner to issue notice to both the parties before carrying out the spot inspection. However, no notice whatsoever of any kind was served upon the petitioner by the Local Commissioner, no procedure as enshrined under the High Court Rules



and Orders for carrying out local inspection for measurement of the suit property, has ever been complied with by the Local Commissioner. Local Commissioner submitted its one-sided report on 18.11.2021. The impugned report being contrary to the actual and factual position, being contrary to the procedure as specified in the High Court Rules and Orders stands vitiated in law and as such, cannot be taken into consideration to reach at any conclusion. As such, the impugned report submitted by the Local Commissioner is liable to be ignored.

9. In support, learned counsel for the petitioner relies upon a judgment passed by Himachal Pradesh High Court in **Sanjay Kumar v. Shakti Singh, (Himachal Pradesh): Law Finder Doc Id # 1804718**; wherein it is held that *"Appointment of Local Commissioner - Executing court has power to appoint a local commissioner exercising power - But same can be used if required after affording opportunity of leading evidence to the parties with respect to violation, if any, of the injunction order or order/judgment sought to be executed."*

10. It is submitted that in violation of above said position in law, Local Commissioner has been appointed without giving any opportunity to the petitioner to lead evidence. Therefore, impugned order dated 27.10.2021 (Annexure P-5) cannot be sustained.

11. Hence, it is accordingly prayed that the present Revision Petition be allowed; and the impugned order be set aside.

12. *Per contra*, learned Senior Counsel appearing on behalf of the respondent/decreed holder vehemently opposes submissions advanced



on behalf of the petitioner and submits that it is blatantly incorrect for the petitioner to state that exparte decree was passed against him. Learned Senior Counsel refers to the judgment dated 20.08.2008 (Annexure P-2) to demonstrate that the said judgment and decree have been passed in the presence of learned counsel for the petitioner/defendant; as also to demonstrate that petitioner had duly filed written statement and had chosen not to lead any evidence in the matter. It is contended that therefore, petitioner was very well aware of the factum of the passing of the decree dated 20.08.2008 and it cannot be stated that the said decree was passed exparte.

13. Learned Senior Counsel further submits that respondent is not aware of any Compromise dated 25.01.2007 (Annexure P-1) relied upon by the petitioner. Admittedly, no such Compromise has been mentioned by the petitioner in his written statement filed to the Civil Suit. Even a perusal of the judgment dated 20.08.2008 (Annexure P-2) shows that no reference has been made therein to any Compromise between the parties. Thus, contention of the petitioner that respondent had taken money and undertaken to withdraw the Civil Suit is also without merit.

14. As regards legal contention of the petitioner that under Order 21 Rule 22 CPC, notice was required to be given to the petitioner, learned Senior Counsel submits that the said provision would not apply to injunction decrees. It is submitted that under Order 21 Rule 32 CPC, notice is required to be issued to the judgment debtor for execution of

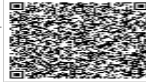


the decree. However, in the present case, notice has been issued only for appointment of Local Commissioner. It is submitted that in any event, no prejudice has been caused to the petitioner as vide the impugned order, the Advocate Local Commissioner has been directed to issue notice to the petitioner before making visit to the spot. Petitioner has even filed reply dated 16.12.2021 (Annexure P-7) to the application of the respondent under Order 21 Rule 32 CPC and has also filed objections dated 16.12.2021 (Annexure P-8) to the Report of the Local Commissioner. Thus, petitioner has availed all remedies available to him. As such, arguments of the petitioner are baseless.

15. Learned Senior Counsel further contends that in any event, it is no longer res integra as has been held by 2 Division Benches of this Court in **Harvinder Kaur v. Godha Ram, (P&H)(DB) : Law Finder Doc Id # 74312** and **Pritam Singh v. Sunder Lal, (P&H)(DB) : Law Finder Doc Id # 50673**, Revision Petition against appointment of Local Commissioner is not maintainable. It is accordingly prayed that the present Revision Petition be dismissed.

16. No other argument is raised on behalf of the parties. I have heard Id. counsel and perused the case file in detail. I find merit in the submissions advanced by learned Senior Counsel for the respondent.

17. It has firstly been contended on behalf of the petitioner that the judgment and decree dated 20.08.2008 was passed exparte. However, this contention of the petitioner is factually incorrect as the said judgment and decree has been passed in the presence of “Sh.



Ranjan Chohan, Advocate counsel for the defendant". Further, in para 2 of the said judgment, learned Trial Court has recorded that *"....defendant who appeared and filed the written statement taking preliminary objections that the present suit is not maintainable; that the plaintiff has no locus standi to file the present suit;....."*. In paras 5 and 6 of the said judgment, learned Trial Court has recorded that:

"5. On the other hand, defendant has not examined any witness and thereafter evidence of the defendant was closed by order.

6. I have heard both the learned counsel for the parties and have also gone through the case file carefully. My issue wise findings are as follow"

18. Thus, judgment dated 20.8.2008 has been passed after hearing learned counsel for the parties. The contention of the petitioner that judgment and decree dated 20.08.2008 is exparte, is only an attempt to mislead the Court and is found to be factually incorrect.

19. Reliance of the petitioner upon the alleged Compromise dated 25.01.2007 (Annexure P-1) is also suspect as learned counsel for the petitioner is unable to explain as to why the said Compromise is not mentioned in written statement filed by him in the Civil Suit; and as to why no argument in this regard is raised by the petitioner before the learned Trial Court; and also as to why no evidence was led by the petitioner before the learned Trial Court in respect of the said Compromise; and why was the same not placed on record by the petitioner before the Trial Court. Thus, contention of the petitioner that



as per the said Compromise, it was incumbent upon the respondent to withdraw Civil Suit as he has received Rs.25,000/-, is also without merit. It therefore necessarily follows that even the contention of the petitioner that he was not aware of the decree dated 20.8.2008 as he was under the impression that suit had been withdrawn by the respondent, is incorrect.

20. Third is a legal contention raised by the petitioner to the effect that under the provision of Order 21 Rule 22 CPC, prior notice was required to be issued to the petitioner before appointment of Local Commissioner. Order 21 Rule 22 CPC reads as follows: -

“22. Notice to show cause against execution in certain cases.

(1) Where an application for execution is made-

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor if upon a previous



application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice."

21. A bare reading of the above provision shows that the same is being mis-applied by the petitioner to the facts of the present case. Moreover, Order 21 Rule 22 CPC does not apply to execution of injunction decrees. In case of execution of injunction decree, the applicable provision is Order 21 Rule 32 CPC.

Furthermore, in the present case, learned Executing Court has categorically recorded in the impugned order dated 27.10.2021 that:

"3. Office report was called and perused. As per office report, vide judgment and decree dated 20.08.2008 passed in case titled as Gurbachan Singh Vs. Kuldip Singh, the respondents restrained from encroaching upon the public street marked as ADEF shown in the site plan and also raising any obstruction in the ingress and outgress from the street and also restrained from dismantling the gate of the house of plaintiff No. 1 marked as ABCD shown in the site plan illegally and forcibly without due course of law. So, in the given circumstances, the Court is of the view that the physical features of the spot are required to be noted down and as such, the appointment of Local Commissioner is very much essential to note down actual and factual position. So, keeping in view the controversy referred above, Ms. Harmanjit Kaur, Advocate, is appointed as Local



Commissioner and is directed to visit at the spot with further direction to note down the actual and factual position of the suit property in question. She is further directed to issue notice to applicant and respondent before making the visit at the spot. She is also directed to prepare attendance sheet of those persons, who were present at the time of making inspection. She can take the help of photographer, if so require. She is further directed to take with herself photocopies of documents relied upon by applicant under proper receipt, from the Civil Ahlmad of this Court. Her fee is assessed Rs.2,000/- and the fee is to be paid by applicant. For report of Local Commissioner, to come up on 18.11.2021.”

22. Thus, the Local Commissioner has been appointed only for the purposes of verification of the situation at the spot. Furthermore, in a most just and equitable manner, the Local Commissioner has also been directed to issue notice to the petitioner before making visit to the spot. Thus, no prejudice or inequity has been caused to the petitioner.

23. In this regard, it is also necessary to take note of the Report dated 18.11.2021 (Annexure P-6) submitted by the Local Commissioner in which it is categorically recorded as follows: -

“4. That, on the spot when the defendant Kuldip Singh was called, he immediately after coming out from house started using filthy language and has proclaimed that he will not obey with the orders of the Court and started threatening that he has hand in glove with the local MLA and he will involve the applicant as well as undersigned in some false case and then they have to face dire consequences. I also



have a video recording in this regard and the same can be produced with the permission of the Court.

5. That, However with the intervention of respectable, I was able to inspect the spot and it was transpired that previously the gate of the respondent was installed at point X, Y and the pillars are still in existence and at present he has installed the gate at point U and V, which is a fresh construction.

6. That, There was ventilation in the form of windows, as well as waste water outlet by way of pipes towards the street, which has been blocked with cement by the respondent and due to such the waste water has been collected at point P in the house of the plaintiff.

7. That, it is clearly seen that the respondent has unlawfully encroached upon the common public street/passageway ABCD having length of 69 feet 9 inch and width of 10-11 feet. Photographs of the spot has been clicked and the site plan on the spot has also been prepared, which are annexed herewith for the kind perusal of this Ld. Court.

The facts narrated above may kindly be embraced and the present report may kindly be taken on record.”

24. The Id. Counsel for the petitioner has not denied the above said report. Further, admittedly, petitioner has also filed objections dated 16.12.2021 (Annexure P-8) to the said Report. Thus, by no stretch of imagination can it be said that any prejudice has been caused to the petitioner.

25. Last but not the least, it is established position in law that Revision Petition against the appointment of Local Commissioner, or against dismissal of application for appointment of Local Commissioner, is



not maintainable. It is well established position in law that where an application for appointment of Local Commissioner has been rejected or allowed, by the Courts below, such orders are not amenable to revisional jurisdiction. It has been held by two Division Benches of this Court in **Harvinder Kaur v Godha Ram, 1979 PLJ 562** and **Pritam Singh v Sunder Lal, 1990(2) PLR 191**, that Revision Petition is not maintainable against an order passed by the Trial Court dismissing for allowing application for appointment of Local Commissioner.

26. It is the consistent position in law, that an order refusing to or allowing appointment of Local Commissioner does not decide any issue nor adjudicate any rights of the parties for the purpose of the suit and therefore, are not revisable. Order appointing a Commissioner has nothing to do with the rights of the parties and it is purely the discretion of the Court. If the Court allowed appointment of a Local Commissioner, no right of the parties is prejudiced.

27. The judgment relied upon by the petitioner in **Sanjay Kumar’s case (supra)** is distinguishable on facts and law.

28. In view of the above, no ground is made out to interfere in the impugned order dated 27.10.2021 (Annexure P-5). The present Civil Revision stands **dismissed**.

29. Pending application(s) if any also stand(s) disposed of.

12.05.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No