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

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Date of decision:06.05.2025

KHAL SINGH AND ANOTHER

...PETITIONERS

VS.

LEKH RAJ AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sunil Agnihotri, Advocate
for the petitioners.

Mr. Akhil Dadwal, Advocate
for the respondents.

SUVIR SEHGAL, J.

1. Aggrieved of order dated 29.01.2025, Annexure P-7, passed by the learned Civil Judge (Junior Division), Mukerian, whereby an application filed under Order 26 Rule 9 CPC for appointment of a Local Commissioner, has been dismissed, petitioners/plaintiffs have approached this Court by way of instant revision petition.

2. Mr. Sunil Agnihotri, Advocate, has submitted that petitioners/plaintiffs filed a suit for permanent injunction restraining the defendants/respondents from interfering in the suit land or from making any construction or demolishing the suit property. He states that the plaintiffs have installed a flour mill and other machinery on the suit land by investing their hard earned money besides constructing a residential house on the suit



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land. He states that as the defendants were threatening to interfere with their possession, a civil suit for permanent injunction restraining the respondents was filed and by order dated 30.08.2022, Annexure P-2, Trial Court directed the parties to maintain status quo regarding possession and construction over the suit property. Counsel asserts that when the respondents forcibly constructed a wall, petitioners filed an application, Annexure P-2, under Order 39 Rule 2-A CPC and also approached the police by submitting a complaint. He submits that in order to establish that the defendants have violated the status quo order, petitioners filed an application, Annexure P-5, for appointment of a Local Commissioner, which after contest, has been erroneously declined by the Trial Court. It is his argument that appointment of a Local Commissioner would aid the Court in coming to the conclusion that the defendants have raised illegal construction as also encroached upon the suit property. He has relied on *Jitender alias Leela Vs. Rashma, Law Finder DocID#1951697.*

3. Per contra, counsel for the respondents has opposed the petition and has submitted that the revision petition is not maintainable. He has placed reliance upon the judgments of the Division Benches of this Court in *Harvinder Kaur and another Vs. Godha Ram and another 1979 PLJ 562* as also on *Pritam Singh and another Vs. Sunder Lal and others 1990 (2) PLR 191.*

4. I have heard counsel for the parties and considered their respective submissions.

5. Petitioners have challenged order, Annexure P-7, whereby an application filed by them for appointment of a Local Commissioner has been



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declined. In *Harvinder Kaur's case (supra)*, a Division Bench of this Court observed that a revision would lie against an interlocutory order only if it determines or adjudicates some right or obligation of the parties in controversy. It was held that a revision would not lie against an order passed under Order 26 Rule 9, CPC. Another Division Bench of this Court in *Pritam Singh's case (supra)* came to the conclusion that an order refusing to appoint a Local Commissioner has nothing to do with the rights of the parties and such an order cannot be assailed in a revision petition. The relevant observations of the Division Bench are reproduced hereunder:-

*"6. After going through the judgments cited in the reference order, we do not find that the earlier judgment in Harvinder Kaur v. Godha Ram, ILR 1979(1) Punjab and Haryana 147, 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 of the Judgment in M/s Sadhu Ram Bali Ram v. Ghansham Dass, AIR 1975 Punjab and Haryana 174, 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



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9, Civil Procedure Code, has nothing to do with the rights of the parties as such. It is the discretion of the Court to appoint a Commission thereunder and if the Court refuses to appoint a Commission, then no right of any party can be said to be prejudiced as such.

7. In M/s. Sadhu Ram Bali Ram's case (supra), it was held that when the matter is looked at keeping in view the provisions of the Evidence Act, then a decision given by the trial Court on the placing of onus of an issue wrongly certainly adjudicates for the purpose of the suit, some right or obligation of the parties in controversy and such an order would fall within the words "case decided". Under the circumstances, the opinion referred to stands already answered by the Division Bench of this Court in Harvinder Kaur's case (supra) and we do not think that it requires re-consideration."

6. A similar view has been taken by a co-ordinate Bench of this Court in Smt. Raksha Devi Versus Madan Lal and others, 2017(3) PLR 249. In view of the settled legal position, an order refusing to appoint a Local Commissioner is not revisable. The judgment relied upon by counsel for the petitioners do not address the issue in hand. There is no perversity or illegality in the order passed by the trial Court.

7. Finding no merit in the revision petition, it is dismissed with no order as to costs.

06.05.2025

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(SUVIR SEHGAL)

JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No