



CR-6482-2025 (O&amp;M)

-1-

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

-.-

**CR-6482-2025 (O&M)  
Decided on :- 15.09.2025**

Amar Nidhi Aggarwal

...Petitioner

VERSUS

Pushpa Gupta and Others

...Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Adityajit Singh Chadha, Advocate for the petitioner.

Mr. Sunil Chadha, Sr. Advocate with  
Mr. Karanjeet Singh, Advocate  
Mr. Tara Dutt, Advocate  
Mr. Akshay Chadha, Advocate  
Mr. Raghav Chadha, Advocate  
for respondent No.1.

-.-

**MANDEEP PANNU J.**

1. The present civil revision petition has been filed by the petitioner/defendant No. 4 challenging the order dated 26.08.2025 passed by the learned Civil Judge (Junior Division), District Court, Chandigarh, whereby the application filed by respondent No. 1/plaintiff under Order 10 CPC has been allowed and a Local Commissioner has been appointed to record her evidence at her residence on 16.09.2025.

**Brief Facts**

2. The brief facts are that the plaintiff, an elderly lady of 84 years of age, had earlier filed an application under Order 18 Rule 16 read with Section 151 CPC for immediately recording her statement and that of the attesting witnesses of the Will, and also under Order 18 Rule 19 read with Section 151 CPC for recording her statement at home through a Local Commissioner, along with an application



under Order 17 Rule 1 CPC filed by defendant No. 4 seeking adjournment. These applications were disposed of vide order dated 31.05.2025 by the learned trial court. The trial court had then observed that though the plaintiff was old in age, her condition was stable, and the medical record reflected that she was advised daily walk of 1 to 1.5 hours, with normal test reports. It was therefore held that there was no need to appoint a Local Commissioner to record her evidence at home, but considering her age, her evidence would be recorded on priority basis in court to avoid inconvenience.

3. Subsequently, the written statement was filed by the present petitioner and issues were framed. At that stage, the plaintiff filed the present application under Order 10 CPC for recording her evidence at her residence, relying on fresh medical record showing that she had now been advised complete supervised rest at home. After considering the application and the submissions, the trial court vide the impugned order dated 26.08.2025 allowed the application and appointed a Local Commissioner to record the statement of the plaintiff at her residence, while observing that the remaining witnesses would be examined in court upon deposit of diet money.

#### **Submissions of the Petitioner**

4. Learned counsel for the petitioner contended that the present application is not maintainable as an earlier identical application had already been dismissed on 31.05.2025; hence, the second application is barred by res judicata. Order 10 CPC does not empower the civil court to direct recording of evidence through a Local Commissioner; such power lies under Order 18 Rules 16 and 19 CPC. Therefore, filing the application under Order 10 CPC is misconceived. No change of circumstances has occurred since dismissal of the earlier application.



The plaintiff resides in the very house which is the subject-matter of dispute; recording of her statement there would be improper. The plaintiff's ability to file replication within one day shows that she is not in such frail health as pleaded. The trial court itself noted contradictory facts, i.e., that affidavit had already been tendered, and yet directed furnishing of another affidavit. Till date the affidavit has not been tendered in court. In support of his contentions, he has placed reliance upon the judgments passed by the Hon'ble Supreme Court in *Kapil Corepacks Private Ltd. and Others Vs. Harbans Lal (since deceased) through LRs. [(2010) 8 Supreme Court Cases 452]*; *Laxmibai (dead) through LRs and Another Vs. Bhagwantbuv (dead) through LRs and Others [2013] 4 Supreme Court Cases 97.*

#### **Findings**

5. I have heard learned counsel for the petitioner and carefully perused the record.
6. The order dated 31.05.2025 disposing of earlier applications was passed at a stage when pleadings were incomplete and issues had not been framed. The court at that stage found no urgency in view of the medical record then placed on record. However, the present application has been filed at a later stage when written statements have been filed, issues framed, and the matter has reached the stage of plaintiff's evidence. Moreover, fresh medical record has been produced showing that the plaintiff is now advised complete supervised rest at home. Thus, a change in circumstances is manifest. It is settled law that principles of res judicata are not rigidly applicable to interlocutory orders which are dependent on subsequent events. Therefore, the contention of the petitioner that the present application is barred by res judicata is not tenable.



7. As regards the invocation of Order 10 CPC, it is correct that Order 10 relates to examination of parties by the Court and does not provide for recording of evidence through a Local Commissioner. However, mere wrong mention of a provision in an application would not disentitle the party from relief if the substantive right exists under another provision. The power to direct recording of evidence through a commission flows from Order 18 Rule 16, Order 18 Rule 19 and also Order 26 Rule 1 CPC. Once the Court is satisfied from medical record and age of the witness that attendance in court is not possible without risk to health, the Court can direct evidence to be recorded through commission. Wrong mentioning of Order 10 CPC in the application is therefore immaterial. Accordingly, the case law cited in *Kapil Corepacks Private Ltd.(supra)* is not applicable to the facts and circumstances of the present case as the cited law relates to the provisions of Order 10 CPC.

8. The contention that the house where the plaintiff resides is itself in dispute also does not impress this Court. Since it is admitted that the plaintiff is residing there, the mere fact that it is disputed property does not render recording of her statement there illegal or improper. The Local Commissioner, being an officer of the Court, will conduct proceedings with due decorum and impartiality.

9. It is also not disputed that the affidavit in examination-in-chief of the plaintiff has already been filed and a copy thereof is with the opposite party. The affidavit will be tendered before the Local Commissioner as part of the evidence of the plaintiff, and cross-examination will also be conducted before the Local Commissioner in presence of both parties. Thus, no prejudice is caused to the petitioner.



10. The case law cited by the learned counsel for the petitioner in *Laxmibai (dead) through LRs (supra) and Bishnupriya Devi (supra)*, is not applicable to the facts and circumstances of the present case as the said cited case law relates to immediate recording of evidence prior to commencement of trial on the ground of old age or witness suffering from serious ailment whereas in the case in hand, the trial has already commenced and the case is fixed for evidence of plaintiff. .

11. Considering the age of the plaintiff, her fresh medical condition as evidenced by record placed before the trial court, and the mandate to avoid denial of justice to a party on account of inability to physically attend court, this Court is of the view that the trial court acted within its jurisdiction and discretion in appointing a Local Commissioner to record her evidence at her residence.

### **Conclusion**

12. For the foregoing reasons, this Court finds no illegality or material irregularity in the impugned order dated 26.08.2025 passed by the learned Civil Judge (Junior Division), Chandigarh. The trial court rightly considered the subsequent change in circumstances and the medical condition of the plaintiff, and exercised its discretion to allow recording of her statement through Local Commissioner. Wrong mentioning of Order 10 CPC does not vitiate the order, as the power exists under the CPC for such appointment. The affidavit already filed will be formally tendered before the Local Commissioner and cross-examination will be conducted in presence of counsel for both parties. Recording the evidence at the residence of the plaintiff, where she admittedly resides, does not cause prejudice to any party.



**CR-6482-2025 (O&M)**

-6-

13. Accordingly, the civil revision petition is dismissed. The impugned order dated 26.08.2025 is upheld.

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

September 15, 2025

tripti

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No

**(MANDEEP PANNU)**  
**JUDGE**