

RP-02-2018

CNR HRRE02000244-2018

Present: Shri D.N.Gupta, counsel for petitioner.

ORDER

The present order shall dispose of an application to appoint local commissioner filed by the petitioner/applicant exparte keeping in view of the facts and circumstances.

2. Brief facts of the application are that the petitioners have filed the ejectment petition against the respondent regarding the demised premises as the same is unsafe and unfit for human habitation and required for bonafide need of the petitioner. The entire building in dilapidated condition and can fall at any time. The respondent without any right is repairing the building just to hide the actual condition of the building. Site plan annexed with the petition was prepared from the outside of the building as the draftsman was not allowed to enter in the house. It is necessary to appoint a exparte local commission to brought condition of the building before the Court and to seek report of existing state of affairs and about existing position of the disputed premises.

3. The learned counsel for applicant/plaintiff argued that the local commissioner be appointed for giving the report of actual existing state of affair of the disputed building. He relied upon the judgment in case titled as **Radhey Shyam Rastogi Vs. Ashish Kumar & Anr., 2008 (4) CCC 428 SC and case titled as Balkar Singh Vs. Gian Singh, 2016(2) CCC 208 (P&H).**

4. I have heard the learned counsel for at length and have perused the case file very carefully.

5. After considering the contentions raised by learned counsel for petitioner, this court is of the considered view that it is settled law that local commissioner cannot be appointed to collect evidence in favour of evidence of the parties. Hence, local commissioner can not be appointed to ascertain the possession, however, the local commissioner can be appointed for ascertaining the actual and factual possession of the spot. I wish to draw my support to the judgment in case **Baljinder Singh versus Sukhdev Singh (2011(1), CCC 810 (P&H)** in which, it was held by the Hon'ble Punjab and Haryana High Court that "local commissioner- to appoint about actual and factual position of the land in dispute. *It does not mean that Local commissioner is to opine as to who is in possession. The local commissioner has only to report what he would see on the spot. After obtaining the report, it is for the Court to appreciate the other evidence to find out as to who is in actual physical possession over the property in dispute*".

In view of the facts and circumstances that one of the ground for ejectment is on the ground of demised property and unsafe and unfit for human habitation; therefore appointment of local commission at first instance for knowing real existing state of affairs and for just decision of the controversy is necessary. Moreover, in case of Radhey Shyam Rustogi's (Supra) Hon'ble Apex Court settled preposition that since the eviction of the appellant from the disputed premises was based on the ground

mentioned, it would be most appropriate and proper that an independent Advocate/Commissioner is appointed for coming to a proper finding for existing state of affairs on the spot at the time of filing this ejectment petition.

Hence, application stands allowed and Shri Ashish Kumar, Junior Advocate present in the Court is appointed Local Commission with the direction to visit the spot with prior notice to petitioner and to respondents and submit his report alongwith photographs regarding actual existing state of affairs and position of suit property on or before 15-02-2018. His fee is assessed at Rs. 4000/- which will be paid by the petitioner.

Pronounced in open Court.
Date:06-02-2018
Arti

(Pawan Kumar)^(UID-HR0332),
Rent Controller, Rewari.

Present: Shri D.N.Gupta, counsel for petitioner.

Petition received today by way of assignment. It be checked and registered. Along with petition an application under order 26 Rule 9 read with section 151 CPC for appointment of local commission filed. Arguments on application heard. Vide my separate detailed order of even date, the application is exparte allowed. However, respondent is at liberty to file appropriate application if aggrieved with this order. Now to come up on 15-02-2018 for awaiting report of local commissioner and notice to respondent for the date fixed on filing copy of petition etc. Dasti summons be given if so desired.

26-10-2017

Arti

Next date : 10-11-2017

Purpose :

(Pawan Kumar)^(UID-HR0332)

Rent Controller, Rewari.