

expenses of litigation under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), on the ground that the husband's petition for divorce involved serious allegations of gross misbehaviour and infidelity" with of course the rider "however, if later the allegations of Atinderjit Singh are found to be baseless or without foundation, Rajinder Kaur can be compensated with costs."

This denotes a grossly misconceived and fallacious approach to the matter in issue. Proceedings under Section 24 of the Act provide neither the occasion nor the stage for the court to enquire into the veracity or the weight to be attached to allegations in the pleadings of the parties. Indeed, to go into such allegations would clearly introduce extraneous considerations or amount to pre-judging the main issue.

(2) As a plain reading of the provisions of Section 24 of the Act would show either party, i.e., husband or the wife as the case may be, having no independent means, sufficient for its support and necessary expenses of the proceedings, may seek maintenance *pendente lite* and expenses of the litigation thereunder. It is to these matters that the court has to address itself when dealing with such an application.

3. The impugned order cannot, therefore, but be held to be patently unwarranted and wholly perverse. It is accordingly hereby set aside, and the wife is granted Rs. 1,000 as costs of the litigation in this Court.

(4) Interests of justice also render it incumbent that the case now be transferred to another court for disposal. It is accordingly ordered to be transferred to the court of Mrs. Bakshish Kaur, Additional District Judge, Amritsar and the parties are directed to appear before her on April 3, 1989.

R.N.R.

Before : J. V. Gupta, A.C.J. & M. S. Liberhan, J.
PRITAM SINGH AND ANOTHER,—Petitioner.

versus

SUNDER LAL AND OTHERS,—Respondents.

Civil Revision No. 1157 of 1987

25th April, 1990.

Code of Civil Procedure, 1908—S. 115, O. 26 rl. 9—Order declining appointment of local Commissioner—Order neither decides an issue

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nor adjudicates rights of party—It is discretion of Court to appoint a local Commissioner—Such order—Whether revisable.

Held, 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. Refusing to appoint a Commission under O. 26 rl. 9 C.P.C. 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.

(Para 6)

Petition under Section 115 CPC for revision of the Order of the Court of Shri D. S. Malwai, P.C.S., Sub-Judge Ist Class, Nabha dated 21st March, 1987 dismissing the application.

Claim : Suit for possession of 1 Kanal of Land encroached upon by the defendants out of Khasra No. 466/2 (9 Kanal-10 Marlas) of Khewat No. 47/85 min situated at Nabha, Distt. Patiala, according to jamabhandi 1980-81. Application u/o 26 Rl. 9 C.P.C.

Claim in Revision : For Reversal of the Order of the Lower Court.

C. B. Goel, Advocate, for the Petitioner.

K. G. Chaudhary, Advocate, for the Respondent.

ORDER

J. V. Gupta, A.C.J.

(1) This order will also dispose of Civil Revision Petitions Nos. 2745, 2746 and 1855 of 1989 and 766 of 1990, as the question involved is common in all these cases.

(2) In Civil Revision Petition No. 1157 of 1987, the question referred is: Whether a revision under section 115 of the Code of Civil Procedure, would be competent against an order declining to issue a Commission for any of the purposes enumerated in Order 26 Rule 9 of the Code of Civil Procedure.

(3) Earlier, this very question was referred to a Division Bench of this Court in the case reported as Harvinder Kaur v.

Godha Ram (1). There the question referred was answered by the Division Bench in the following terms:—

“In view of the foresaid discussion, we hold that no revision would lie against an order passed under Order 26 rule 9, and the view taken in *M/s Mohinder Kumar, Rajinder Parkash; Dalmir Singh alias Dalmira and Mangal Singh and another v. Piara Lal* 7, cases lays down the correct law”.

However, before parting with the judgment, the Bench also observed in paragraph 12 of the report in the above-said case as follows:

“Before parting with the judgment, it may, however, be made clear that it cannot as a general rule be laid down that in no case a “revision would lie against an interlocutory order passed under any other provision of Order 26 and that it would be on the facts of each case that it will have to be found out whether the interlocutory order, against which a revision is sought to be filed, has adjudicated for the purposes of the suit some right or obligation of the parties in controversy or not.”

(4) In Civil Revision Petition No. 1157 of 1987, when the matter came up before the learned Single Judge, the learned Judge was of the opinion that the view taken in *Harvinder Kaur's case* (supra) by the Division Bench, required re-consideration by a larger Bench; hence the reference was made for constituting a larger Bench. It is thus that this case has come up before us.

(5) The reason given by the learned Single Judge for re-consideration was that this Court earlier in *M/s Sadhu Ram Bali Ram v. M/s Ghansham Dass Madan Lal* (2), held that a revision against an order refusing to change the onus of an issue would be competent. Though this case was noticed by the earlier Division Bench in *Harvinder Kaur's case* (supra) yet the learned Single Judge distinguished it on facts. According to the learned Single Judge if the order refusing to change the burden of proof can be said to result in adjudication upon some rights between the parties, it is difficult to subscribe to the view that an order declining the right of appointment of a commission would not result in the

(1) ILR 1979(1) Pb. & Hry. 147.

(2) A.I.R. 1975 Pb. & Hry. 174.

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adjudication upon any right of the parties. It was further observed that so far as the identity of an property was concerned, a party possibly cannot lead any evidence except by getting a commission appointed to demarcate the land at the spot. No amount of oral evidence can be a substitute for the report of the commission.

(6) After getting through the judgments cited in the reference order, we do not find that the earlier judgment in *Harvinder Kaur's case* (supra) 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'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 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 purposes 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 question referred 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.

(8) As a result, all the revision petitions fail and are dismissed with no order as to costs. The parties are directed to appear in the trial Court on May 17, 1990.

P.C.G.