

**(1985) 07 P&H CK 0001**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 745 of 1985

Devinder Mohan

APPELLANT

Vs

Tilak Raj

RESPONDENT

**Date of Decision:** July 8, 1985

**Hon'ble Judges:** M.M. Punchhi, J

**Bench:** Single Bench

**Advocate:** R.L. Sarin, for the Appellant; Hemant Kumar, for the Respondent

**Judgement**

M.M. Punchhi, J.

The Plaintiff Petitioner brought a suit for dissolution of the partnership firm and for settlement of accounts. As was natural, the trial Court, before whom the matter was, appointed a Local Commissioner to go into the accounts at an appropriate stage. While this was in the process, the parties' counsel seemingly were not happy with the Local Commissioner Shri Dirshan Singh Pheruman and went on at the final stage to argue the matter on the basis of the record compiled by the trial Court. The trial Court thus passed judgment in favour of Plaintiff Petitioner decreeing his suit to the tune of Rs. 65,250/- with an added relief of interest etc. The Defendant-Respondent preferred an appeal before District Judge, Amritsar. There arose some dispute about the execution of the decree. The matter was brought to this Court in Civil Revision No 242 of 1985, in which G C. Mittal, J , specifically ordered the District Judge to dispose of the appeal on 29.1.1985. The learned District Judge however, did not dispose of the appeal but rather called for the report of the Local Commissioner Shri Darshan Singh Pheruman observing that the said report was the requirement of the Court for recording a satisfactory judgment. It is this view of the District Judge which is subject matter of challenge by way of this petition for revision.

2. The Defendant Respondent undisputedly has challenged is his appeal before the District Judge the observations made by the trial Court that the parties' counsel had agreed to give the proceedings before the Local Commissioner a go by and had contended themselves to have a judgment on the basis of record compiled by the

trial Court. As has been informed by the Learned Counsel for the Petitioner there is a proceeding zimni order of the Court as well besides the observations made in the final judgment of the trial Court- Be that as it may, that factum and observations are disputed in appeal by the Defendant-Respondent. That statement carries a strong presumption that it is correct and truthful unless of course there is enough material to rebut it In the presence of the afore-referred to zimni order and observations in the final order of the trial Court, there was no necessity for calling the report of the Local commissioner at that stage for recording a satisfactory judgment. The Appellate Court was otherwise entitled to correct an error of the trial Court and pass an appropriate order on sufficient material forthcoming on the record. Thus without deciding that question first, the report of the Local Commissioner could not have been called for, muchless from Darshan Singh Pheruman who had lost confidence of both parties. In any case the report of Local Commissioner is never sacrosanct. It is open to objection and Court is not bound to follow it. In the circumstance, there is no option thus but to set aside the order of the District Judge, Amritsar and pass the following directions:

- (i) He should dispose of the appeal on the next date of hearing fixed in the case, which statedly is 31.7.1985, without calling for the report of the Local Commissioner and re-hear the suit as was heard by the trial Court.
- (ii) In the event the learned District Judge considers unsustainable the consensual order passed on the basis of the statements of the Learned Counsel for the parties, to give a go-by to the proceedings before the Local Commissioner, as also the observations in the final order of the trial Court, then in that case, it would be open to the District Judge appoint a new Local Commissioner and have his report on subject to facilitate writing a satisfactory judgment and
- (iii) in no case shall Shri D. S. Pherument be assigned the task in the later eventuality, for he has lost confidence of both parties.

Ordered accordingly. No costs.