

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.5175 OF 2015

Shri. Lala Narayan Vakale (Kadam) and others .. Petitioners

Versus

Shri. Laxuman Balu Waghmode .. Respondent

Mr. R. S. Jadhav, for the Petitioners.

Mr. A. B. Avhad, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 28th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 04.02.2015 passed by the Executing Court i.e. Learned Joint Civil Judge Junior Division, Malshiras, by which order the application Exh.26 filed by the Plaintiff for being provided with police aid at the time of construction of the compound wall came to be allowed. The Petition also challenges the order dated 04.02.2015 passed on Exh.27 filed by the Petitioner for appointment of the Court Commissioner, by which order the said application came to be rejected. The Respondent herein is the original Plaintiff who had filed the suit in question being Regular Civil Suit No.464 of 2004 for grant of injunction against the Defendants. The said suit came to be decreed by the Trial Court by judgment and order dated 31.03.2009 and the injunction sought by the Plaintiff came to be granted. The Plaintiff

thereafter filed application for execution being Regular Darkhast No.82 of 2009. In the said application, the Plaintiff filed the instant application Exh.26 for being provided with police aid so as to facilitate the construction of the compound wall, which compound wall the Plaintiff wanted to install pursuant to the decree which was passed in his favour. The Trial Court has allowed the said application vide the first impugned order dated 04.02.2015. The Trial Court observed that on an earlier occasion the Plaintiff's application being granted police aid was allowed. The Trial Court observed that the Plaintiff is entitled to enjoy the fruits of the decree by putting up the compound wall.

2. In so far as the application Exh.27 is concerned, the Trial Court has held that the Defendant had not applied for appointment of the Court Commissioner in the suit nor did he apply for appointment of the Court Commissioner from the year 2009 till the application was filed in the year 2013 and therefore the application for appointment of the Court Commissioner was only a ruse to delay the execution of the decree. In my view, having regard to the reasons mentioned in the two impugned orders for rejection of the application Exh.26 and Exh.27, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.