IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.748 OF 2015

Mr. Pandurang Hari Mohite .. Petitioner

Versus

Mr. Vitthal Dnyanu Pandhre .. Respondent

Mr. Ashok B. Tajane, Advocate for the Petitioner.

CORAM : R.M. SAVANT, J.
DATE : 30th JANUARY, 2015

P.C.

1. The writ jurisdiction of this Court is invoked against the order dated 26.06.2014 passed by the Joint Civil Judge, Junior Division, Karmala, District-Solapur, by which order the application Exh.50 filed by the Petitioner under Order 39 Rule 7 of the CPC came to be rejected.

2. The suit in question being Regular Civil Suit No.43 of 2007 has been filed by the Plaintiff for perpetual injunction for restraining the Defendant from interfering with his possession in respect of the suit property in question. It appears that earlier the Plaintiff had filed application Exh.12 for appointment of the Court Commissioner. The said application was filed to bring on record the factum as to who is in possession of the suit property. It seems that the said application Exh.12

came to be rejected by the Trial Court for want of necessary steps. It is thereafter that the instant application Exh.50 came to be filed now invoking Order 39 Rule 7 of the CPC. The purport of the instant application also seems to be to bring on record as to who is in possession of the suit property. After stating so, the Plaintiff has prayed that the concerned Court visit the site and carry out inspection. The Trial Court has rejected the said application on the ground that the machinery of the Court cannot be used for collection of evidence. In my view, apart from the ground on which the application has been rejected, the said application Exh.50 was thoroughly misconceived as an application under Order 39 Rule 7 can only be filed for the purposes mentioned in the said Rule 7 and cannot be invoked generally by a party to the suit. Hence, on both the counts, the order passed by the Trial Court cannot be found fault with. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. Needless to say that suit would be tried on its own merits and in accordance with law.

[R.M. SAVANT, J]