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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2237 OF 2012

Mr.Madhusudan Gopal Railkar and others ... Petitioners

Vs.

Shri Bhaskar Vaman Gharat and others ... Respondents

Ms.Gauri Godse, Advocate for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 10th JUNE, 2015

P.C. :

. Heard Ms.Gauri Godse, learned Counsel for the petitioners.

2. By this petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 06/01/2012 passed by the learned 2nd Joint Civil Judge, Senior Division, Alibaug below Exhibit 57 in Regular Civil Suit No.131 of 2007. By that order, the learned trial Judge rejected the application made by the petitioners for appointment of the T.I.L.R. as Court Commissioner under Order 26 of the Code of Civil Procedure, 1908.

3. Having regard to the fact that by the impugned order, the learned trial Judge has declined to appoint the Court Commissioner, in my opinion, the order is purely a discretionary order. In view thereof, no case is made out for invocation of powers

under Article 227 of the Constitution of India. Hence, petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)