

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.843 OF 2015

Shri Prafulla Dattatraya Phadke)... Petitioner
V/s.
Shaileja Bhalchandra Bhagwat & Anr.)... Respondents

Mr.Dormaan J.Dalal for the petitioner.
Mr.P.B.Bhagwat-respondent no2 present in person.

CORAM: K.R.SHRIRAM, J.**DATED : 27.01.2015.****P.C. :**

1 This writ petition is filed against an order passed by the trial court not appointing commissioner under Order 26 of the Code of Civil Procedure 1908. The petitioner is the plaintiff in the suit filed before the Joint Civil Judge-Senior Division, Thane. The suit was filed for eviction of the defendants. I am not going in to the merits of the matter as that is not necessary for the present writ petition. The petitioner, i.e., the plaintiff in the suit, had undergone a heart surgery on 6.6.2012. The petitioner submitted a certificate dated 11.9.2014 from one Dr.Shantanu Deshpande certifying that the petitioner was under his care at Dr.Godbole Heart Care Hospital, Thane from 5.6.2012 to 8.6.2012. He has also certified that the petitioner is advised light activities and advised to avoid stress. The trial court refused to appoint Commissioner under Order 26 of the Code of Civil Procedure 1908 after perusing the said certificate of

Dr.Deshpande. The trial court has very correctly observed that the certificate does not disclose that the plaintiff Praful Phadke is unable to attend the court for cross-examination. To a specific query put by the court, the counsel stated that the plaintiff is not bed-ridden.

2 Having considered Dr.Deshpande's certificate and the order passed by the trial court, I find no infirmity, perversity or illegality in the impugned order which requires interference at the hands of this court.

3 In the circumstances, the petition stands rejected with cost of Rs.5000/-. This amount to be split between both the respondents.

(K.R.SHRIRAM, J.)