

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

**WRIT PETITION NO.6887 OF 2014**

Uday S/o Haribhau Mahajan & Anr.

-vs-

Jorass Co-operative Housing Society Ltd. Nagpur, Thr. its Secretary & Ors.

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. P. Bhandarkar, Advocate for petitioners.  
Shri P. A. Abhyankar, Advocate for respondent No.1.

**CORAM : A.S.CHANDURKAR, J.**

**DATE : JULY 23, 2015**

Rule heard finally with consent of learned counsel for parties.

The petitioners are aggrieved by order passed by the trial Court dated 11/11/2014 refusing to appoint Court Commissioner to record evidence of non-applicant Nos.5 and 6 therein.

In proceedings for setting aside the ex-parte decree, an application was moved by non-applicant Nos.5 and 6 under provisions of Order-26 Rule-1 of the Code of Civil Procedure seeking to be examined by the Commissioner. It was stated that both the witnesses were suffering from various ailments and were undertaking various treatments. The trial Court rejected said application on the ground that their physical condition was not such that they could not appear for leading evidence.

On behalf of the petitioners, reliance is placed on various documents to indicate the state of health of said witnesses. It is submitted that the ailments suffered by the said witnesses were of such nature that they were not in a position to come before the

Court.

On behalf of respondent No.1 it is submitted that the documents filed on record by the non-applicant Nos.5 and 6 were not sufficient to justify the prayer for being examined on commission.

Considering the nature of documents filed on record by the present petitioners, the trial Court found that the documents placed on record did not indicate that they were not in a position to appear before the Court. It has further found that though they were undertaking treatment, the nature of ailments were not such that they were required to be examined on commission.

Considering the documents that were placed on record and the discretion exercised by the trial Court, there is no case to interfere with the impugned order. It is open for said witnesses to appear before the trial Court in case they desire to get themselves examined. Petition is therefore dismissed. Rule stands discharged. No order as to costs.

**JUDGE**