

HON'BLE SRI JUSTICE DILIP B. BHOSALE

CIVIL REVISION PETITION No. 2549 OF 2012

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P.C:

This civil revision petition impugns the order dated 02-04-2012 passed on I.A No. 1703 of 2010 in O.S No. 234 of 2009, whereby the respondent – plaintiff's prayer for appointment of a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure has been allowed. The relevant observations allowing the application read thus:

“Heard both sides. Admittedly the plaintiff filed the suit for recovery of amount basing on the agreement. The issues framed by this Court clearly shows that the plaintiff has constructed 3600 sq.ft. against the agreed area of 3200. Even in the written statement filed by the defendant clearly shows that he is ready and willing to pay the amount for the extra construction work. Therefore to resolve the disputes between the parties as Advocate Commissioner can be appointed to measure the constructed area with the help of a technical person nominated by both the parties which cannot be termed as “collection of evidence”. In a case of construction unless and until the measurements were made the dispute cannot be resolved in a fair manner. Therefore, an Advocate Commissioner can be appointed to measure the constructed area with the assistance of technical person or persons nominated by both the parties.

In the result, G.Geeta, Advocate appointed as Commissioner to measure construction area with the assistance of any expert or experts nominated by both the parties one each. Commissioner fee is fixed Rs.5,000/- (Rupees five thousand only).”

Learned counsel for the petitioner vehemently submitted that in a money suit, filed by the respondent – plaintiff, appointment of Court Commissioner was not only wrong but it was not necessary on the facts of the case. He further submitted that the application for appointment of Court Commissioner was made only to collect the evidence.

I have perused the impugned order as well as the other material placed before the Court. Learned Judge has recorded the reasons why he felt it necessary

to appoint the Court Commissioner. The order being discretionary in nature, I am not inclined to interfere with it in revisional jurisdiction under Article 227 of the Constitution of India. In my opinion, no prejudice would cause to the petitioner. It is always open to the petitioner to file objections to the report of the Court Commissioner, if he so desires, and if any such objections are filed, it is necessary for the Court below to consider the same on merits, in accordance with law. Keeping this option open, the C.R.P is dismissed. All contentions of the parties on merits are kept open.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, J

02-04-2015

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