

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****932 WRIT PETITION NO.10131 OF 2015****KHUZMA ABBAS SAIFEE****VERSUS****THE COMMISSIONER MUNICIPAL CORPORATION AURANGABAD****...****Advocate for Petitioner : Mr. Kasliwal Ajit D.****Advocate for Respondents :Mrs. M. A. Deshpande****CORAM : V. K. JADHAV, J.****DATE : 27th January, 2016****PER COURT :**

1. Heard finally with the consent of the parties at admission stage.

2. The petitioner/original decree holder has filed application Exh.16 in R.D.No. 5/2013 for issuance of summons/notice to witness Mr. Raka for cross examination on the report dated 11.03.2015 submitted by the respondents judgment debtors. The learned Civil Judge, Senior Division, by its order dated 17.06.2015 below Exh.16, has rejected the said application. The learned counsel for the petitioner decree holder submits that the respondents/judgment debtors submitted the said report before the Executing Court wherein, the Architect has opined that structure cannot be removed. Consequently, the petitioner decree holder constrained to file an

application for calling the said person, who had given the report, for cross examination.

3. The learned counsel for the petitioner submits that the executing court has erroneously rejected the said application with the observation that if there is no examination-in-chief, cross examination of the witness cannot be recorded.

4. The said Architect Mr. Raka is not a person appointed by order of the Court as Court Commissioner. Thus, he cannot be called for cross examination directly on his report. If the respondent judgment debtors wants to examine said Mr. Raka as witness to prove the contents of the report, in that event, the petitioner decree holder is at liberty to cross examine the said witness.

5. In the light of above, writ petition is disposed of. No costs.

(V. K. JADHAV, J.)

JPC