

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7473 OF 2015**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Rajesh Datar, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 11/04/2016

PC:

1. Not on board. At the request of Mr. Datar, taken up in the production board.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 22.6.2015 passed by learned 5th Jt. Civil Judge, Junior Division, Kolhapur below Exhibit-54 in R.C.S. No.1664/2012. By that order, learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant', under Order 26 Rule 9 of Code of Civil Procedure, 1908 (for short, CPC) for appointment of Court Commissioner. Mr. Datar reiterated the submissions that were made in

the trial Court.

3. I do not find that the learned Judge has committed any error in passing the impugned order. The respondent, hereinafter referred to as 'plaintiff', has instituted suit for recovery of possession. In other words, the suit does not raise boundary dispute or is not for possession of encroached portion. By the impugned order, the learned trial Judge rejected the application on the ground that it is amounting to collecting evidence regarding the possession. Hence, the Petition fails and the same is dismissed. However, it is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of CPC.

(R.G.KETKAR, J.)