

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 286 OF 2016**

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. Umesh H. Pawar, Advocate for Petitioner.

**CORAM: R.G.KETKAR, J.
DATE : 15/01/2016**

PC:

1. Heard Mr. Umesh Pawar, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the order dated 3.1.2015 passed by the learned Civil Judge, Jr. Dn. Islampur below Exh.34 in R.C.S.No.484 of 2011. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as plaintiff, for appointment of Court Commissioner.

3. The learned trial Judge rejected the application mainly on the ground that the suit is instituted for perpetual injunction

restraining the defendant from obstructing the plaintiff from user of road. The learned trial Judge observed that the plaintiff did not lead any evidence and when the Court was about to pass further orders in the suit, at that stage the plaintiff has filed application for appointment of Court Commissioner with a view to collecting evidence.

4. As observed by the learned trial Judge, instead of leading evidence, the plaintiff has made application for appointment of Court Commissioner. For the reasons stated in paragraph 2 of the order, I do not find that the learned trial Judge committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal

as contemplated by Section 105(1) of
C.P.C.

(R.G.KETKAR, J.)