

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3137/2016

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. Anwar Shaikh for the Petitioner

CORAM : K. K. TATED, J.
DATE : MARCH 15, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner Plaintiff challenges the order dated 23/04/2015 passed by the 4th Additional Judge, Small Causes Court and Jt. Civil Judge, Senior Division Pune below Exhibit-70 in civil suit No.40/2012 and judgment dated 14/12/2015 passed by the 4th Adhoc District Judge in Civil Revision Application No.31/2015 by which the court dismissed the Plaintiff's Application under Order 26 Rule 9 read with section 151 of the Code of Civil Procedure, 1908.

2. In the present proceedings, the Plaintiff filed civil suit No.40/2012 for possession of the suit property i.e. Room No.1 admeasuring 250 sq.ft. in new Shivaji Nagar, CTS No.1707A, Shree Saraswati

CHS Ltd. plot No.9, Pune on the ground that the Respondent Defendant carried out unauthorised construction as well as encroached upon the open space. In that suit, the Petitioner filed Application under Order 26 Rule 9 with section 151 of the Code of Civil Procedure, 1908 below Exhibit- 70 for appointment of a court commissioner to visit the suit premises and submit a report in respect of the encroached area, unauthorised construction carried by the Defendant and to bring the present situation of the suit property on record along with photographs and sketch. That Application was rejected by the Trial Court by order dated 23/04/2015 on the ground that the Petitioner Plaintiff seeking collection of evidence against the Defendant through court. Hence, the Petitioner Plaintiff preferred Civil Revision Application No.31/2015 before Ad-hoc District Judge, Pune which was also dismissed on the ground that the court commissioner cannot be appointed to bring on record the evidence against other parties. Hence, the petition.

3. The learned counsel for the Petitioner submits that both the courts below failed to consider that the Petitioner has filed Application below Exhibit- 70 only to place on record present

position of the suit premises. Hence, this Hon'ble Court be pleased to set aside the orders passed by both the courts below and direct the Trial Court to appoint a court commissioner to visit the suit premises and submit his report showing the present position of the suit premises which is in possession of the Respondent Defendant.

4. Heard the learned counsel for the Petitioner at length. It is to be noted that bare reading of Application below Exhibit- 70 filed by the Petitioner Plaintiff under Order 26 Rule 9 read with section 151 of the Code of Civil Procedure, 1908 shows that the Petitioner Plaintiff wants to bring on record the evidence against the Defendant through court, that cannot be allowed.

5. Considering these facts, I do not find any substance in the Writ Petition. Same stands rejected.

JUDGE