

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 12500 OF 2015

Moiz Badrudin Mehta,
R/at 316/320, Kanta Bldg.,
M.S.Ali Road, Mumbai – 400 007. ... Petitioner

v/s

1. Municipal Corpn. Of Gr. Mumbai,
2. Hussain E. Chitalwala,
Kanta Bldg., 4th floor, A-Wing,
316/318, M.S.Ali Road, Mumbai. ... Respondents

Mr.P.J.Thorat along with Suryajeet Chavan for the petitioner.

Mr.Vinod Mahadik for respondent No.1 B.M.C.

Mr.Niranjan Mogre for respondent No.2.

Coram: N.M. Jamdar, J.

Dated: 23 September 2016

ORAL ORDER:

The Petitioner challenges the order passed by the learned City Civil Court Judge, dated 28 January 2015, appointing the Court Commissioner to inspect the premises and make a report to the Court.

2 This order passed by the learned City Civil Court Judge is

purely interlocutory order and it is within the discretion of the learned Judge to appoint the Court Commissioner to visit the suit premises and submit a report. Learned counsel for the Petitioner, however, submitted that the learned City Civil Court Judge has undertaken this exercise at the behest of Respondent No.2 whose impleadment is under challenge in the companion Writ Petition No.1115 of 2015. He submitted that the appointment of the Court Commissioner is not necessary in the present circumstances. He also submitted that the Court can appoint the Court Commissioner under its inherent powers but the learned Judge has not done so. He further submitted that the Petitioner was not heard on the point of appointment of the Court Commissioner at the time of passing the order.

3 As far as the hearing the Petitioner is concerned, the learned counsel for the Petitioner has sought to contend two grounds which are noted above, which would have been the objection of the Petitioner. As far as the learned Judge allowing the notice of motion only at the behest of Respondent No.2 is concerned, what is directed to be placed on record is a report of the Court Commissioner which will ultimately aid the learned Judge in adjudication of the dispute. Therefore, it is not a relief in favour of Respondent No.2 *per se*, but the outcome of granting the request of Respondent No.2 is something which will assist the learned Judge, in adjudication. The learned Judge, though on the application made by Respondent No.2

has granted the application for an appointment of the Court Commissioner, and it is not specifically stated in so many words that the report will assist the learned Judge that is something which the learned Judge has kept in mind before directing the appointment of the Court Commissioner. Even if the Writ Petition No.1115 of 2015 filed by the Petitioner is allowed and Respondent No.2 is removed from the array of parties in the suit, the report of the Court Commissioner - an independent person, will continue to be of assistance to the learned Judge. Therefore, there is no need to defer the decision in this writ petition for the outcome of Writ Petition No.1115 of 2015. Once the Court Commissioner's report is brought on record, it is not the case that it will be accepted *per se*. The Petitioner will have liberty to make submissions as regard the Court Commissioner's report.

4 In the circumstances, I do not find that the power of superintendence vested in the Courts to interfere in purely discretionary and interlocutory orders passed by the learned Civil Judge is warranted. It is further clarified that though the notice of motion taken out by Respondent No.2 is granted, it will not be treated as reflection on the merits of the contentions advanced by Respondent No.2, neither it will affect the contentions of the Petitioner that Respondent No.2 is not a necessary party in the suit.

5 The writ petition is disposed with this clarification.

6 Writ Petition No.1115 of 2015 shall be placed on board on 29 September 2016.

(N. M. Jamdar, J.)