

Sequeira

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

WRIT PETITION NO. 7713 OF 2016

Baburao Pandharinath Gope

... Petitioner

Vs.

Kisan Maharaj Sakhre & ors.

... Respondents

Mr.Prerak Choudhary h/f Mr.Ashok Dhanuka, for the Petitioner.

Mr.Hitesh Vyas h/f Mr.Sandeep R.Waghmare, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Tuesday, 30 August 2016.***

P.C. :

The Petitioner, who is the Defendant, has challenged the order dated 22 February 2016 passed by the learned Civil Judge Senior Division Khed, in directing that the examination of the witness of the Plaintiff to be done through a Commissioner.

2. The learned counsel for the Petitioner submitted that the order needs to be interfered with as the Petitioner will not be able to see the demeanor of the witness and that the witness is avoiding to attend the Court.

3. In the course of trial before the learned Judge, the learned Judge has found it necessary in view of the facts and circumstances of

the case to appoint Commissioner to examine the witness. Even if the witness is examined through a Commissioner, the Commissioner is empowered to make necessary observations while recording the evidence. Therefore order is fully within the jurisdiction of the learned Civil Judge. The challenge to validity of this provision of the Code of Civil Procedure on the ground of demeanor of the witness will not be seen, was negatived by the Apex Court. The jurisdiction under Article 227 cannot be invoked to correct every error during the course of the trial. The Code of Civil Procedure has not provided any appeal or revision against such discretionary orders. The legislative policy is to allow the suits to be completed without needless interruptions. The Code has provided the remedy to challenge such purely interlocutory orders in appellate proceedings under Section 105 of the Code. The legislative intent of minimum interference during the proceedings of the suit, cannot be defeated by exercising the power of superintendence under Article 227 of the Constitution of India in the interlocutory orders. The challenge of the Petitioner is kept open under Section 105 of the Code. With this clarification, the Writ petition is disposed of.

(N.M.Jamdar, J.)