

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

WRIT PETITION NO. 7961 OF 2015

M/S. Jitesh Enterprises

.... Petitioner

Versus

M/S. Vishwamitra Rathi & Parmar
& Anr.

.... Respondents

Alok Bagla I/b. Bagla & Associates for Petitioner.
A.V.Anturkar, Senior Advocate I/b. Tanaji Mhatugade for
Respondent No.1.

***CORAM : N. M. Jamdar J.
Tuesday 20 December 2016***

ORAL ORDER

. By this Petition the Petitioner has challenged the order dated 9 June 2015 passed by the learned District Judge, Pune, rejecting the application filed by the Petitioner for appointment of Civil Engineer as a Court Commissioner.

2. The Respondent No. 1 filed a Civil Suit No. 57 of 2002 for eviction of Respondent No.2. The suit was decreed by Judgment and Decree dated 18 March 2005. The decree was passed on the

ground that Respondent no.2 has demolished the southern wall of the suit premises and has carried out unauthorized constructions as well as caused nuisance and annoyance. In the Appeal bearing No. 319 of 2005 filed by the Respondent No.2 in the District Court, Pune, where it is pending, an application was filed by the Petitioner for impleadment which has been granted and the Petitioner has been joined in the Appeal.

3. The learned Counsel for Petitioner submitted that Petitioner is a sub-tenant and having been joined in the Appeal, will permit have to granted leave advance such arguments as may be available. Pursuant to this order passed on 27 June 2013 in Writ Petition No. 645 of 2012, the application moved by the Petitioner ought not to have been rejected and an opportunity needs to be given to the Petitioner and that the Petitioner is not delaying the proceedings, but infact the plaintiffs are. The learned Counsel for Respondents pointed out that there is a collusion in between the Plaintiff and Respondent no.2 who are father and son.

4. The Respondent No.2 had an adequate opportunity to meet the case of the Respondents/plaintiff in the suit and decree had been passed against him and Appeal is pending. Merely because Petitioner has been joined in the Appeal, a limitless

opportunity cannot be given to the Petitioner. The order dated 27 June 2013 indicates that the stand was taken by the Respondent No.1 to avoid delay in deciding the Appeal. Looking at the close relation of the Petitioner and the Respondent No.2, it is clear that an attempt has been made to re-open the proceedings which have stand concluded against the Respondent no.2. Even though the Petitioner is technically an independent party, if any indulgence is to be granted to the Petitioner, near relation between the parties cannot be lost sight of in the equitable jurisdiction of this Court. The view taken by the learned District Judge that such an application at a belated stage ,cannot be granted ,cannot be faulted with. There is neither any error nor any failure of the justice. The Writ Petition is accordingly rejected.

5. An amount of Rs. 25,000/- deposited by the Petitioner is permitted to be withdrawn by the Petitioner.

(N. M. Jamdar, J.)