

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

WRIT PETITION NO.12906 OF 2016

Mrs Jyoti Kishor Adkar	... Petitioner
v/s	
Patel Integrated Logistics Ltd. and others	... Respondents

Mr Surel S. Shah for Petitioner.

CORAM : RAJESH G. KETKAR, J.

DATE : 22nd NOVEMBER, 2016.

P.C. :-

1. Not on board. At the request of Mr Shah, taken up on production board.
2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner (hereinafter referred to as Defendant No.3) has challenged the judgment and order dated 6th June 2016 passed by the learned 3rd Joint Civil Judge, S.D., Nashik in Special Civil Suit No.143 of 2000. By that order, the learned Trial Judge rejected the application made by the Defendant No.3 for appointment of Court Commissioner as per Order 26 Rule 9 of Civil Procedure code.

3. Mr shah submitted that the Respondent No.1 has instituted the suit for recovery of amount on the ground that the Defendants have not paid the freight charges to the Plaintiff. The Plaintiff has withheld the consignment of the Defendants. Mr Shah submitted that the consignment withheld by the Plaintiff is Ayurvedic products which is perishable. He invited my attention to paragraph 24 of the cross-examination of Plaintiff's witness wherein he has deposed that they have withheld the goods and proper care is taken. Mr Shah submitted that the Plaintiff has already disposed of the consignment. In other words, the consignment of the Defendants retained by the Plaintiff is not in existence. Apart from that, as the Ayurvedic products are perishable, in order to ascertain existence of the consignment and its condition, the Defendant No.3 filed an application for appointment of Court Commissioner. The learned Trial Judge, however, rejected the Application.

4. While rejecting the Application, the learned Trial Judge has given two reasons – (1) that the consignment withheld by the Plaintiff is not the subject matter of the suit and (2) the Defendants

have not set up counter claim. The Defendants therefore cannot seek any relief in respect of statement or adjournment in lieu of sale proceeds of the consignment withheld by the Plaintiff.

5. For the reasons recorded in paragraphs 9 to 11 of the impugned order, I do not find that any case is made out for interference with the order impugned. Hence Petition fails and is dismissed. However, it is made clear that where a decree is challenged 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 proposed proceedings as contemplated by Section 105(1) C.P.C.

(RAJESH G. KETKAR, J.)