

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

25 WRIT PETITION NO. 7593 OF 2014

DATTATRAY GANGARAM UPLENCHWAR
VERSUS
PREMSINGH ABHIMAN DAKORKAR

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Advocate for Petitioner : Mr. Anant R. Magar, h/f Mr. Shinde G. P.

Advocate for respondent : Mr. Ashutosh Kulkarni h/f for A. N.

Nagargoje

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CORAM: SUNIL P. DESHMUKH, J.

DATED: 14TH AUGUST, 2017.

ORDER :

1. Heard learned Counsel for the parties.
2. Petitioner-original plaintiff is before this court, aggrieved by order dated 1st February 2014 on application Exh-39 in Regular Civil Suit No. 15 of 2012 whereunder his request to have appointment of Court Commissioner, has been rejected by Civil Judge Junior Division, Mahur.
3. Said application had been resisted by present respondent-original defendant by filing say on 10.01.2014.
4. Learned Counsel, Mr. Magar holding for learned advocate Mr. G. P. Shinde for petitioner contends that the plaintiff was having two windows on western side of his house for free passage of air and light to the property owned by him and on western side of the house

he has rain water eaves. Petitioner has been enjoying the same since long as his house has been built 50 years ago. In order to ascertain this position, appointment of Court Commissioner would be proper.

5. He, therefore, submits that the court has erred in passing order rejecting application Exhibit-39 and Exhibit 39 ought to have been allowed.

6. He, therefore, requests to allow the petition.

7. Mr. Ashutosh Kulkarni, learned advocate appearing for the respondent submits that the impugned order refers to that substantive application for appointment of Court Commissioner had been rejected earlier by passing an order on Exhibit-20. He submits that petitioner has annexed a copy of order in writ petition, withdrawing the same which was filed challenging order on Exhibit-20. He submits that besides amendments in the plaint in respect of declaration being claimed, no further event has occurred. He further refers to earlier order on Exhibit-20 and submits that by reasoned order said application has been rejected.

8. Taking into account aforesaid, it appears that an earlier application for appointment of Court Commissioner, for the same reasons, has been rejected by order on Exhibit-20 and there have been no intervening circumstances giving rise to file another application for appointment of Court Commissioner. Reasons given under impugned

order do not call for interference under writ jurisdiction.

9. The writ petition is not being entertained and as such, is dismissed.

(SUNIL P. DESHMUKH, J.)

vsm