

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3877 OF 2017

Jeanette G. Rodrigues & Others .. Petitioners.
v/s.
Municipal Corporation for the city of Thane .. Respondent.

Mr. Rajesh S. Datar, for the Petitioners.
Mr. Mandar Limaye, for the Respondent.

CORAM: M.S.SANKLECHA, J.
DATE : 18th SEPTEMBER, 2017.

P.C:-

Moved for urgent reliefs.

2 This Petition under Article 227 of the Constitution of India, challenges the order dated 19th December, 2016 passed by the 7th Joint Civil Judge, Senior Division, Thane. By the impugned order, the Petitioner's application for appointment of Court Commissioner under Order XVI Rule 9 of the Code of Civil Procedure, 1908, (Code) was rejected.

3 Petitioners' have filed a suit, seeking mandatory injunction, directing the Respondent-Corporation to re-construct a portion of the compound wall as well as toilet and bath-rooms, on the ground that the same had been demolished without authority of law.

4 The impugned order dated 19th December, 2016 records the

fact that the suit does not involve any boundary or encroachment dispute. Further, the impugned order also records the fact that the matter was closed for final arguments six months prior to making of the application by the Petitioner for appointment of the Court Commissioner. Further, the impugned order correctly observes the fact that the office of the Court Commissioner cannot be used for collecting the evidence for the parties. In the above circumstances, application for appointment of Court Commissioner, was dismissed.

5 The view taken by the impugned order does not warrant any interference under Article 227 of the Constitution of India. Needless to state that, in case the Petitioner does decide to file an Appeal against the final order in the pending suit, it would be open to the Petitioner to urge this issue in the appeal filed in terms of Section 105 of the Code.

6 Accordingly, **Petition dismissed.** No order as to costs.

(M.S.SANKLECHA,J.)