

WRIT PETITION NO.373 OF 2017

Mr.R.M. Umeshsinh for the Petitioner
Mr.A.S. Sawant for Resp. No.1

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 24, 2017

1. Not on Board. Upon urgent mentioning, taken on Production Board.

2. This Writ Petition filed under Article 227 of the Constitution of India is directed against the order dated 22.6.2016 passed by the learned Joint Civil Judge Senior Division, Barshi, below exhibit 49 in R.C.S. No.62 of 2012 thereby rejecting the application for appointment of a Civil Engineer as a Court Commissioner to execute the commission work under Order XXVI Rule 9 of the Civil Procedure Code.

3. The learned Counsel for the petitioner has submitted that earlier the plaintiff i.e., the petitioner had moved an application

below exhibit 30 for the appointment of a Civil Engineer as Court Commissioner to take measurements of the construction and also the submit a report in respect of the work done by the petitioner/plaintiff. The said application was allowed by the Court. Accordingly, the Court Commissioner carried out the measurements and the same were submitted in the Court on 13.11.2011 under the signature of the Court Commissioner. The learned Counsel for the petitioner has submitted that alongwith the measurements, no report was submitted by the Court Commissioner and, therefore, he had to move a second application for appointment of Civil Engineer as Court Commissioner.

4. The learned Counsel for the respondents opposes the petition and submits that the order of the learned trial Judge that the second appointment of Court Commissioner to take the measurements and submit the report will amount to collection of evidence and the view taken by the learned Judge is correct.

5. Perused the impugned order as also the earlier report of measurements submitted by the Court Commissioner. It may be

true as argued by the learned Counsel for the petitioner that though the earlier Court Commissioner submitted the measurements, he has not given a detailed report of the construction work which was expected of him. However, it is to be noted that the report was submitted in November, 2014. The second application was moved on 28.9.2012 and since 2012, though the application was filed in 2012, till 2016, the application was not pressed by the plaintiff. Today, the plaintiff's examination-in-chief is filed.

6. Considering these facts on record, the impugned order passed by the learned Judge cannot be faulted with. The earlier Court Commissioner has to lead evidence and if the plaintiff brings on record that the Court Commissioner did not submit the report as prayed earlier, he is always free to examine any Civil Engineer as his witness and bring on record his evidence in respect of building construction work and the quality of the work which was done by him.

7. In view of the above, the Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)