

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1125 OF 2016

(SMT. SHINDHU SHIVADAS MAHULIKAR.....VS.. NAGPUR MUNICIPAL CORPORATION & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.C.Dharmadhikari, Advocate for Petitioner.

Shri Tariq Mohammed Zaheer, Advocate for Respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : APRIL 25, 2017.

Heard.

The plaintiff has challenged the order passed by the trial Court rejecting the application (Exh.No.82) filed by her under Order XXVI Rules 9 and 10 of the Code of Civil Procedure.

After hearing the learned advocates for the respective parties and examining the documents placed on the record of the petition, I find that the learned trial Judge has rightly adverted to all the relevant aspects and has summed up his conclusions properly in paragraph 4 of the impugned order.

The learned advocate for the petitioner/plaintiff has relied on the judgments given by this Court in the case of *Malhar vs. Shivaji*, reported in **2014(4) Mh.L.J. 237** and in the case of *Kolhapuri vs. Yallappa*, reported in **2011(3) Mh.L.J. 348** to fortify his submission that the facts of the case necessitate appointment of Commissioner and that the impugned order is not sustainable as the learned trial Judge has failed to exercise the jurisdiction vested in him. The

learned trial Judge has recorded that by order passed on 24th September, 2009 the application (Exh.No.5) filed by the plaintiff came to be allowed, then the suit proceeded, the plaintiff adduced her evidence and three witnesses were examined on her behalf and at the stage of recording of evidence of the defendant, the application is filed and there is no explanation for not filing the application earlier. Moreover, from the facts, it is clear that the plaintiff is seeking to collect the evidence through Court Commissioner, which is not permissible.

In these facts, the judgments relied upon by the advocate for the petitioner are not of any assistance to him.

I find no patent illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE