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

WRIT PETITION NO.5135 OF 2017

Altaf Yusuf Naik	...	Petitioner
V/s.		
Sujata Janardhan Patil	...	Respondent

Mr. Pramod N. Patil, for the Petitioner.
Mr. Kishor S. Patil, for the Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for respondent No.2.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 17.11.2016, passed below exh.66 in Special Civil Suit No.120 of 2011, by the 2nd Joint Civil Judge, Senior Division, Alibag.

3] Application at Exh.66 was filed by the present petitioner contending inter alia that the defendant No.1 has, as per agreement of sale dated 22.2.2010 undertaken to hand over clear title of the suit property to the petitioner. However, the entry in 7x12 extract of the suit property shows that the land is affected by Hetavane Project. It is

necessary to know what efforts respondent No.1 has taken to remove that entry and hence he should be directed to produce documentary evidence to that effect. Further, he should also be directed to produce documentary evidence to show that there is an approach road to suit property.

4] However, as rightly observed by the trial Court that in the first place, there is no specific term or condition in the agreement of sale that respondent was to take efforts to remove the entry of the land being affected by Hetawane Project or he was to prepare the approach road for the suit property. In the absence any such term in the agreement of sale, the petitioner cannot call upon respondent No1 to produce the documents to show that he has made efforts to remove that entry or has prepared any approach road to the suit land. At the most, as already the affidavit in-lieu of examination in-chief has been filed by plaintiff and the hearing of the suit has also been commenced, the petitioner can cross examine the respondent, to bring such evidence on record. However, this is not the way to get such evidence, by filing the application for production of the documents. Because of it, unnecessarily, the hearing of the suit is protracted for more than two years.

5] The Writ Petition, therefore, being without any merit stands disposed off as dismissed.

6] It is made clear that above observations are made only for the purpose of deciding this Writ Petition and the trial Court shall not be influenced by any of the above observations, while deciding the suit.

[DR.SHALINI PHANSALKAR-JOSHI, J.]