

vks

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

WRIT PETITION (ST) NO.4920 OF 2018

Kishorechandra Jhunhunwala

and ors

... Petitioners

V/s.

Panorama Co-operative Housing

Society Ltd and ors

... Respondents

Mr. J.S. Kini i/by Dr. Santosh Raje, for the Petitioners

Mr. R.S. Tripathi, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13st MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for the respondents.

2] By this petition, the petitioner is challenging the order dated 31st July, 2015, passed by City Civil Court, in Notice of Motion No.3622 of 2014 in L.C. Suit No.3169 of 2006.

3] The said Notice of Motion was taken out by the present petitioner -defendant before the trial Court, for recalling the order passed by the said Court on 14.8.2014 in Notice of Motion No.2769 of 2006, preferred by the plaintiff-respondent, for interim injunction restraining the defendant from carrying out any construction work in

the suit premises and also for appointment of Court Commissioner to visit the suit premises. By the said order the trial Court has allowed Notice of Motion partly and directed Registrar to appoint Court Commissioner to carry out commission work as prayed.

4] The only contention advanced by learned counsel for the petitioner is that when the said Notice of Motion was decided and the Court Commissioner was appointed, the petitioner was not heard in the matter. The presence of learned counsel for the petitioner is shown in the said order, however, learned counsel for petitioner has appeared in another connected suit between the same parties and this Notice of Motion was not at all argued by learned counsel for the petitioner. Learned counsel for the petitioner has further brought to the notice of this Court that the trial Court has already appointed the Court Commissioner in another suit. He has visited the suit premises and filed report. Therefore, it was not necessary to appoint Court Commissioner again in this suit. It is urged that learned trial Court has, however, rejected this Notice of Motion, for recalling of the order on the ground that such Notice of Motion cannot be maintainable and the petitioner has to approach the High Court in appropriate proceedings.

5] In my considered opinion, if one has regard to the order dated 14th August 2014 it clearly goes to show the presence of

advocate for defendant at the time when this order was passed. It is also categorically stated in the order that, “Otherside has appeared and raised strong objection” Therefore, it becomes difficult to accept, against the record of the trial Court, that the petitioner's advocate was not heard in the matter or petitioner was not given an opportunity of hearing. The law is well settled that the judicial record is having it's own sanctity and raising doubt on its veracity, by this Court in writ jurisdiction is totally uncalled for and unwarranted.. Whatever is recorded in the order needs to be therefore, accepted and hence the ground raised for recalling of the said order cannot be accepted.

6] As a result, there is no reason to interfere in the impugned order, passed by the trial Court.

7] The Writ Petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]