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

WRIT PETITION NO. 3865 OF 2017

Subhash Chunilal Racca	...	Petitioner
V/s.		
State of Maharashtra		
through the Collector and ors	...	Respondents

Mr. R. D.Soni, with Mr. V.R. Kasle, for the Petitioner.
Mr. A.a R. Metkari, AGP for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned AGP for the State.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order passed below Exh.17 and Exh.13, on 8.2.2017, by the 2nd Adhoc District Judge, Nashik in Misc. Appeal No.146 of 2015.

3] Application at Exh.13 was filed by the petitioner before the Appellate Court, for permitting him to produce additional evidence in the form of public documents which reflect subsequent measurement and inspection of the suit property carried out by

respondent. The said application was preferred under Order 41 Rule 27 of the Code of Civil Procedure. By the impugned order, the Appellate Court has held that this application will be decided alongwith the main appeal and directed the parties to be ready to argue the appeal on the merits.

4] Application at Exh.17 was filed by the petitioner for the appointment of the Court Commissioner, under Order 26 Rule 9 of Civil Procedure in order to bring on record the existing situation of the suit property to know whether the possession of suit property is taken or not. In the said application prayer was also made to direct respondent to produce the map and the inspection report of the said land. This application was also rejected by the Appellate Court.

5] The reason given by the Appellate Court for rejecting this application at Exh.17 was that the petitioner has already filed application at Exh.13 for production of certain documents in view of subsequent events and hence the appointment of Court commissioner is not necessary.

6] In my considered opinion, if the Appellate Court has already ordered that the application at Exh.13 filed under Order 41 Rule 27 CPC, will be decided alongwith the main appeal, it was not proper on the part of Appellate Court to reject this application at Exh.17 for appointment of Court Commissioner, it would be proper to

direct the Appellate Court to decide this application at Exh.17
alongwith main appeal.

7] Hence writ petition is allowed.

8] The impugned order passed below Exh.17 is set aside;
whereas the order passed below Exh.13 is not disturbed and
confirmed.

9] The Appellate Court is directed to decide application at
Exh.17 alongwith the main appeal.

[DR.SHALINI PHANSALKAR-JOSHI, J.]