

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5253 OF 2018

Sharad Dagdu Nilakhe ... Petitioner  
Vs.  
Jaychand Shantilal Surana and others ... Respondents

Mr. Samir A. Kumbhakoni for Petitioner.  
Mr. Sarthak Diwan i/b. Mr. Ashutosh M. Kulkarni for Respondent No.1.

**CORAM : R. G. KETKAR, J.**  
**DATE : SEPTEMBER 27, 2018**

**P.C. :**

Heard Mr. Kumbhakoni, learned Counsel for the petitioner and Mr. Diwan, learned Counsel for respondent No.1 at length.

2. This Petition takes exception to the order dated 21.02.2018 passed by the learned Civil Judge Junior Division, Barshi below exhibit-281 in R.C.S.No.136 of 2001. By that order, the learned trial Judge allowed the application made by the first respondent under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and appointed Shri. Arun Vikas Shah, Civil Engineer as Court Commissioner to inspect the suit premises and file report.

3. After arguing the Petition for quite some time, on instructions, Mr. Kumbhakoni seeks permission to withdraw this Petition with liberty to file application / petition seeking review of the impugned order. On instructions, he states that the Commissioner appointed by the trial Court is close relative of the first respondent. The petitioner will file review confining to this ground namely, appointment of the Commissioner, who is close relative of the first respondent, and will not raise any other contention. Mr. Kumbhakoni assures that within 4 weeks

from today, petitioner will file review petition / application before the trial Court.

4. In view thereof, on the motion made by Mr. Kumbhakoni, Petition is allowed to be withdrawn with liberty as prayed for.

5. The present Petition is instituted on 14.03.2018. In view thereof, if the application / petition for review is filed within 4 weeks from today, the learned trial Judge will decide the same on its own merits and shall not reject the same on the ground that it is barred by limitation. It is made clear that the petition / application shall be confined only to the ground namely, appointment of the Commissioner, who is close relative of the first respondent and no other ground shall be agitated by the petitioner. Application / petition shall be disposed of expeditiously. Petition is disposed of accordingly.

**(R. G. KETKAR, J.)**