

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8821 OF 2017

Avinash Kamleshwar Shrivastava

... Petitioner

v/s

Vinayak Gopal Dandekar and others

... Respondents

Mr S.A. Sawant for Petitioner.

Mr Prajakt M. Arjunwadkar for Respondent No.1.

CORAM : B.P. COLABAWALLA, J.

DATE : 11th DECEMBER, 2018

P.C.:

1. Rule. The Respondents waive service. By consent of parties, rule is made returnable forthwith and heard finally.

2. This Writ Petition challenges the order dated 21st June 2017 passed belows Exh.112 in R.C.S. No.30 of 2015.

3. Exh.112 was an application filed by the original Defendant No.1 (Petitioner herein) inter alia seeking a direction that Defendant No.1's application below Exh.24 be heard and decided. The Trial Court was of the opinion that since this Court had fixed a chronology of how the Suit was to be heard, the

application for appointment of Court Commissioner could not be heard and decided prior to deciding the application below Exh.20 (injunction application filed by the Defendant No.1).

4. It is now common ground before me that Exh.20 is already disposed of. This being the case, I do not see any impediment for the Trial Court to decide Exh.24 which is an application filed by Defendant No.1 for appointment of Court Commissioner.

5. In the circumstances mentioned above, it is directed that the Trial Court shall hear and decide Exh.24 (application filed by the Defendant No.1 for appointment of Court Commissioner) on its own merits and in accordance with law within a period of two months from today. It is clarified that I have not opined on the merits of the said application and the Trial Court should decide the same after hearing both the parties.

6. Rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)