

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11743 OF 2018

Pukhraj Kanmal Sanghvi and Anr.

.. Petitioners

Versus

Premraj Jethma Munot

.. Respondent

Mr. Nikhil N. Wadikar I/b Mr. Nandu Pawar for the Petitioners.

Mr. S.N. Chandrachood for the Respondent.

CORAM : M.S. SONAK, J.

DATE : 19 NOVEMBER 2018.

P.C:-

. Heard learned Counsel for the parties.

2. The challenge in this Petition is to the order dated 18.07.2018 by which the learned fourth Additional Judge and Civil Judge Junior Division, Pune has dismissed Petitioner's application below Exhibit-53 seeking appointment of a Court Commissioner to ascertain whether or not the Petitioners are actually carrying on business from the suit premises.

3. Mr. Nikhil Wadikar, the learned Counsel for the Petitioner submits that the landlords in their Petition seeking eviction have made categorical averments that the suit premises are not in use for several years. He submit that such averments are false and the falsity can be established if the Court Commissioner is appointed to inspect the premises and furnish a report. He submits that since the learned trial Judge has not appreciated this aspect, the impugned order warrants

interference.

3. Mr. S.N.Chandrachood, the learned Counsel for the Respondent defends the impugned order on the basis of the reasoning set out therein.

4. Having considered the rival contentions and perused the record by judgment, there is no case made out to interfere with the impugned order. It is settled position in law that the Court Commissioner is not to be appointed for the purpose of collection of evidence for any of the parties to the proceedings. The issue, as to whether, the suit premises were being used or not is an issue which the parties will have to establish by leading proper evidence before the learned trial Court. For this purpose, there is no necessity of appointing any Court Commissioner. Learned trial Judge has quite correctly relied upon the ruling of this Court in the case of ***Sanjay Khandare Vs. Sahebrao Kacharu Khandare, 2001 (2) Mh.L.J.959*** in order to dismiss the application at Exhibit-53.

5. Since, there is no jurisdictional error pointed out, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)