

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

WRIT PETITION NO.60 OF 2018

Rohini Ramchandra Tharkude

.. Petitioner

V/s.

Sindubai Raghunath Kate and Ors.

.. Respondents

Mr.Ketan Joshi I/b M/s.Ergo Juris for the petitioner

Mr.Vilas S. Shelar for the respondent nos.1 to 5

CORAM: K.K. TATED, J

DATED : DECEMBER 4, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 Advocate Mr.Vilas S. Shelar submits that he received instruction to appear on behalf of Respondent nos.1 to 5. He undertakes to file his Vakalatnama within one week from today.

3 By this petition under Article 227 of the Constitution of India the Petitioner 3rd party challenging the order dated 11.10.2017 passed by 8th Joint Civil Judge, Senior Division, Pune below Exhibit-100 in Special Darkhast No.59 of 2013 directing parties to furnish the names and addresses of the qualified Engineers to carry out the work and measurement of the suit

shop and flat.

4 The learned counsel for the Respondent nos.1 to 5 submits that subsequently by consent of decree holder and judgment debtor, Trial Court i.e. 8th Joint Civil Judge, Senior Division, Pune passed order on 13.11.2017 below Exhibit-1 in Special Darkhast No.59 of 2013, acted on an order below Exhibit-100. Operative part of the order dated 13.11.2017 reads thus:

“ORDER

1. Ms.Anuradha Govardhan, architect is hereby appointed commissioner on behalf of J.D. and Sou. Deepali Junagade, civil engineer is hereby appointed commissioner on behalf of D.H.

2. Both commissioners are hereby directed to carryout the measurements of the suit flat and suit shop jointly and in coordination with each other after having prior intimation, in advance, of the dates of commission work to D.H. and J.D. or their representatives, if any.

3. Both commissioners are hereby directed to maintain a proper record of the dates of each and every activity done by them in pursuance of the commission work, such as, receipt of writ of commission work, the date of intimation given to each other and to the parties or their representatives, the mode by which the communication it was given, the proof of receipt of communication to them, taking of attendance on the date of commission work whoever present at that time, the time when the commission work was stated and when it was completed, if it is postponed for further date, then, they should specify the date and time when it was stop and on which date and time it was postponed etc.

4. *The both commissioners are hereby directed to submit joint report in respect of inspection and measurements of the suit flat and suit shop thereby showing the carpet area and built-up area as existing on the actual site with minute details, within 30 days from the date of receipt of notice of commission work.*

5. *Furthermore, both commissioners are directed to mention the names of the parties or their representatives who were present and their presence, at the time of commission work was carried out, in their report.*

6. *The D.H. and J.D. both are directed to bear the expenses of commission work of their own commissioner, who are appointed by this court to do commission work on their request.*

7. *The D.H. and J.D. both are hereby directed to deposit a fees of Rs.10,000/- each towards the fees, for the time being, of their respective commissioner.*

8. *The D.H. and J.D. are hereby further directed to provide the necessary copies of the documents required by the commissioners for carrying out the commission work.*

9. *After the deposit of commissioner fees with this court, necessary writ be issued to commissioners."*

5 The learned counsel for the Respondent nos.1 to 5 submits that in view of subsequent development, nothing survives in the present Writ Petition. Hence, same is required to be dismissed as infructuous.

6 Admittedly, in the present proceedings, petitioner third party challenges the order dated 11.10.2017 below Exhibit-100

and same is acted by judgment decree holder as well as judgment debtor and same is recorded in order dated 13.11.2017 below Exhibit-1 in Special Darkhast No.59 of 2013.

7 In view of subsequent development, nothing survives in the Writ Petition.

8 Writ Petition stands rejected as infructuous.

9 No order as to costs.

(K.K. TATED, J.)