

psv

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

WRIT PETITION NO.14267 OF 2017

Smt.Kamal Balasaheb Nitave & Anr.

..Petitioners

Vs.

E.I.T.A. India Ltd. & Ors.

..Respondents

Mr.K.P. Lad for Petitioners.

CORAM : G.S. KULKARNI, J.

DATE : 15th JANUARY, 2018

P.C.:

Heard learned Counsel for the petitioner.

2. Challenge in this petition is to the order dated 5th December 2017 passed by the learned 5th Joint Civil Judge, Junior Division, Kolhapur, whereby an application as moved on behalf of the petitioners under Order 39 Rule 7 of the Code of Civil Procedure for appointment of a Commissioner for inspection of the suit premises was rejected. The learned trial Judge observed that application of the plaintiff for temporary injunction is pending hearing and meanwhile application for inspection of the suit property was filed.

3. The learned trial Judge while dismissing the application observed that situation of suit property can be gathered from the photographs filed by both the parties and under such situation appointment of Court Commissioner would not be necessary. It is observed that the application is of the nature wherein if the Commissioner is appointed, it would amount to collection of evidence, which cannot be permitted and

more particularly when the Court was concerned with an application for temporary injunction.

4. Having perused the impugned order, in my opinion, there is no infirmity in the reasons as set out in paragraph Nos.3 and 4 for the learned trial Judge to dismiss the application of the petitioner invoking the provisions of Order 39 Rule 7. In any case if there is any necessity of such inspection, the Court is not powerless to appoint a Commissioner at any stage of proceeding to ascertain any factual aspect in regard to the suit premises.

5. With aforesaid observations, keeping open all the contentions of the parties on the merits of the principal dispute, no interference is called for. Writ Petition is accordingly dismissed.

[G.S. KULKARNI, J.]