

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6566 OF 2017

Shri Sudipta Bhattacharya	.. Petitioner
Vs.	
Sou. Sonali Rajesh Narvekar and ors.	.. Respondents

Mr.Chetan G.Patil, for the Petitioner.
Ms.Pramila S.Bhaingade i/b M.Janardhanan, for the Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 01st OCTOBER, 2019

P.C. :

. Heard learned Counsel for petitioner.

2. Learned Counsel for respondent No.1 states that though she has written several letters and tried to contact respondent No.1 but there has been no response from respondent No.1. She is not able to get any instructions from respondent No.1. She wants to withdraw her appearance and accordingly, she is permitted to withdraw her appearance. She

seeks discharge of her appearance & is accordingly discharged.

3. I had requested learned Counsel to assist this Court. The petitioner is the original defendant No.1. The plaintiff had filed the Suit for injunction. During the pendency of the Suit and even before framing of the issues, the plaintiff made an application below Exhibit 87 for appointment of the Court Commissioner. By the order dated 15/02/2017, the trial Court allowed the application and appointed the Deputy Superintendent of Land Records as the Court Commissioner to carry out commission work. In paragraph 4 of the order, trial Court has recorded that virtually the appointment of the Court Commissioner would be for collection of evidence and therefore while allowing the application imposed certain conditions.

4. In my opinion, even as evidence is not recorded and as the Suit is simplicitor for injunction, the trial Court should not have allowed the application for appointment of Court Commissioner which is made obviously for collecting evidence.

It is for the plaintiff to establish their case. The impugned order therefore is set aside.

5. It is however made clear that after the evidence is recorded, if the plaintiff makes an application for appointment of the Court Commissioner, the same may be considered by the trial Court on its own merits without being influenced by the observations made in this order. The Petition is allowed with no order as to costs. Exhibit No. 37 is rejected.

(M.S.KARNIK, J.)