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

WRIT PETITION NO. 8938 OF 2016

Ranjana Rajesh Pisal & ors. ..Petitioners.
vs.
Chhatrapati Shahu Co-op. Housing
Society Limited ..Respondent

**WITH
WRIT PETITION NO. 7562 OF 2015**

Janardhan K. Pawar & ors. ..Petitioners
vs.
Chhatrapati Shahu Co-op. Housing
Society Limited ..Respondent

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Shri M.J. Jamdar for petitioners in WP/8938/2016.
Shri S.B. Deshmukh for petitioners in WP/7562/15.
Shri P.J. Thorat, Counsel for respondent No.1 in both Petitions.

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CORAM : M.S.KARNIK, J.

DATE : 18th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners and
learned Counsel for respondent No.1.

2. The petitioners are the original judgment debtor
Nos.1F, 2G, 3B, 5(A), 5(B) and 5(C). The petitioners are

challenging the order dated 11th June, 2015 passed by the Executing Court in Regular Darkhast No. 72 of 1979 below Exhibit 299 and 300. The respondents had filed the execution proceedings for executing the order passed by the Judge, Co-operative Court, Satara, in case No. ABN/596/72-73 as modified by the Co-operative Appellate Court in Appeal No. 215 of 1980. The Executing Court on application made by the decree holder passed order on 24/1/2011 below Exhibit 202 appointing DILR as Court Commissioner for filing its report in respect of 8 R 5 Gunthas as set out in the application. The petitioners by filing applications below Exhibits 299 and 300 sought recall of the order dated 24/01/2011 below Exhibit 202 appointing DILR as Court Commissioner.

3. According to learned counsel for the petitioners, the decree of which execution is sought is a preliminary decree. At the stage of passing of the preliminary decree and before final decree could be passed, the order appointing Court Commissioner could not have been made.

4. Learned counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of **Shankar Balwant Lokhande (Dead) by Lrs. v/s. Chandrakant Shankar Lokhande and another** reported in (1995) 3 SCC 413 to support his submission.

5. I have gone through the order passed by the Executing Court appointing the Court Commissioner and also the order dated 11/6/2015 rejecting the application for recalling of the order passed below Exhibit 202. By the order passed below Exhibit 202 the Executing Court had directed appointment of the DILR as the Court Commissioner. The DILR was yet to submit the report at which point of time the petitioner filed the application for recalling the order. I am informed that the Court Commissioner in terms of the order passed below Exhibit 202 has already filed his report.

6. In this view of the matter, I do not find any reason to interfere with the order passed by the Executing Court below Exhibits 299 and 300. However, liberty is kept open for the

petitioners to challenge the Court Commissioner's report including on the ground that at the stage of passing of preliminary decree Court Commissioner cannot be appointed.

7. With this liberty the Petitions are rejected.

(M.S.KARNIK, J.)