

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

WRIT PETITION NO. 11514 OF 2019

Satyabhama Bhanudas Bodhale (Since Deceased) through LR's Rani Bhanudas @ Popat Bodhale	...	Petitioner
V/s.		
Sou. Mangal Tukaram Mali	...	Respondent

Mr.Vijaykumar Garad for Petitioner.

CORAM : A.S. GADKARI, J.

DATE : 25th November 2019.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner/original defendant has impugned Order passed below Exhibit-73 in Regular Civil Suit No.27 of 2010, thereby rejecting her application under Order 26 Rule 9 of Civil Procedure Code for appointment of the Court Commissioner.

2] Heard Mr.Garad, learned counsel for the petitioner. Perused the record.

3] The record indicates that the respondent-landlord has filed the aforesaid suit under the provisions of Maharashtra Rent Control Act, 1999 for

possession of the suit property, on various grounds, more particularly mentioned in the plaint and for arrears of rent. In the said suit, the Trial Court has already framed issues and recording of evidence is in progress. The petitioner filed the aforestated application below Exhibit-73 for appointment of Court Commissioner on the ground that, after the demise of original defendant, her daughter was occupying the said suit premises. That when the petitioner had been to Mumbai, the respondent broke opened the suit premises, removed bags and other household articles and put her own lock on it. That with a view to open the lock and to take inventory, the said application is filed by the petitioner.

4] A perusal of record would indicate that, the petitioner has not cited any witness in support of her case that, on a particular day the respondent infact broke open the lock and removed the belongings of the petitioner from it. It further appears to this Court that, the said application was filed to procrastinate the suit and to collect evidence against the respondent in the said suit. The Trial Court has recorded a categorical finding that, appointment of the Court Commissioner at this stage would not be proper, as it is an attempt of the petitioner to collect evidence in support of his case. It further appears to this Court that, the said application of the petitioner cannot be allowed at this stage for the reason that, the material admissions extracted by the respondent from the petitioner in the evidence may probably be washed away which is

detrimental to the interest of the respondent.

5] In view thereof, this Court finds no merit in the Petition.
Petition is accordingly rejected.

[A.S. GADKARI, J.]