

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9464 OF 2019

Shri Govindbhai Laljibahi Kakadia and anr. .. Petitioners

Vs.

M/s.Regal Builders and Developers & ors. .. Respondents

Mr.Ganesh Murthy i/b K.V.Aiyar & Associates, for the
Petitioners.

Mr.Vinod L.Desai, for Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 29th AUGUST, 2019

P.C. :

. Heard learned Counsel for the parties.

2. The order under challenge in this Petition is dated 25/06/2019 passed by the Small Causes Court, Pune. The order is passed below Exhibit 122 in Special Civil Suit No. 1040 of 2012. The application was made by petitioner No. 1 - plaintiff No.1 for appointment of the Court Commissioner to record his evidence at the address mentioned in the application i.e. Worli,

Mumbai.

3. Learned Counsel for the petitioners submitted that the petitioner No. 1 - plaintiff No.1 is suffering from the medical condition of knee disorder and he needs surgery as soon as possible.

4. Learned Counsel relies upon medical certificate dated 09/08/2019 which is at page 21 of the paper-book.

5. This certificate was however not before the trial Court when the impugned order came to be passed. The trial Court rejected the application by the impugned order on the ground that the medical certificate produced on record was dated 21/02/2019 .

6. Learned Counsel for the respondents opposed the Petition. However, considering the certificate dated

09/08/2019, I am of the opinion that the trial Court can consider the request of the petitioner No. 1 - plaintiff No.1 afresh based on the certificate dated 09/08/2019. Petitioner No.1 is granted liberty to file a fresh application for appointment of the Court Commissioner based on the medical certificate dated 09/08/2019. If such an application is filed, the trial Court to consider the said application on its own merits without being influenced by any observations made by me in this order. The trial Court while considering the application not to be influenced by observations made in the order dated 25/06/2019.

7. With these observations, Writ Petition is disposed of.
No order as to costs.

(M.S.KARNIK, J.)