

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.247 OF 2020

Dr.Pradeekumar s/o Keshavlal Shah

Petitioner

Versus

Commissioner,
Latur Municipal Corporation, Latur & another

Respondents

Mr.Rajiv B. Deshmukh, advocate for the petitioner.

CORAM : ROHIT B.DEO, J.

DATE : 08/01/2020

PER COURT :

1 The petitioner is the plaintiff in a suit brought for mandatory injunction for demolition of illegal construction effected by defendant No.2.

2 By the order impugned, the trial Court has rejected the application preferred by the petitioner under Order 26 Rule 9 of the Civil Procedure Code for appointment of Court Commissioner to ascertain the extent of the illegal construction.

3 The learned trial Court has held that the burden to

prove that the construction is illegal and if illegal, the extent thereof, is that of the plaintiff and that a Court Commissioner cannot be appointed for collection of evidence. Several decisions are referred to and relied upon by the trial Court to substantiate the view taken.

4 The evidence is yet to commence. No fault can be found with the view of the trial Court that a litigant cannot be permitted to collect evidence through the Court Commissioner. In this view of the matter, I am not inclined to interfere with the impugned order.

5 However, the petitioner is at liberty to move an appropriate application under Order 26 Rule 9 of the Civil Procedure Code after conclusion of the evidence and it is needless to observe that if the trial Court is of the opinion that in the light of the evidence on record, appointment of Court Commissioner to clarify or explain the evidence, which is on record or any other relevant reason, is necessary, the trial Court shall consider such request on its own merits and uninfluenced by any observation in the order impugned.

6 Subject to the observations *supra*, the petition is
disposed of.

(ROHIT B.DEO)
JUDGE

adb